

# Exhibit 2



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6                   TRANSCRIPT of the videotaped deposition  
7                   of the expert witness, called for Oral Examination  
8                   in the above-captioned matter, said deposition being  
9                   taken by and before MICHAEL FRIEDMAN, a Notary  
10                  Public and Certified Court Reporter of the State of  
11                  New Jersey, via WEBEX, ALL PARTIES REMOTE, on March  
12                  29, 2022, commencing at approximately 9:04 in the  
13                  morning.

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10 ALSO PRESENT: JOSE RIVERA, Videographer

11 ROBERT KLUGMAN

12 HELENE SCHWIERING

13 DANIEL ALDRICH

14 ROGER WARIN

15 ZACHARY SCHREIBER

16 DANIELLA DALLA

17 CHRISTIAN B□LOW

18 ANTHONY ALMEIDA

19 AC EGHOLM

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4	Examination By:	
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9	E X H I B I T S	
10	Exhibit NO.	PAGE
11	Exhibit 5200-5203	Dubinsky initial report, rebuttal report, reply report, revised list of prior testimony
12		20
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14	Exhibit 5209	Dubinsky declaration
15	Exhibit 5210	WH_MDL 96977 - 96986
16	Exhibit 5211	WH_MDL 265119 - 265129
17	Exhibit 5225	Investor publication
18	Exhibit 5227	SEC report, 10/14/21
19	Exhibit 5217	MPSKAT 75372 - 75374
20	Exhibit 5218	MPSKAT 88402 - 88403
21	Exhibit 5219	MPSKAT 182365 - 182367
22	Exhibit 5220	FGC Securities document
23	Exhibit 5221	SEC investor bulletin
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3	Exhibit NO.	PAGE
4	Exhibit 5223	London Stock Exchange
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5	Exhibit 5224	Investor.gov document
6	Exhibit 5228	Determination of
7		beneficial owner
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\* \* \* \*

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1                   THE COURT REPORTER: My name is  
2                   Michael Friedman, a Certified Shorthand  
3                   Reporter. This deposition is being held  
4                   via videoconferencing equipment.

5                   The witness and reporter are not in  
6                   the same room. The witness will be  
7                   sworn or affirmed in remotely pursuant  
8                   to agreement of all parties. The  
9                   parties stipulate that the testimony is  
10                  being given as if the witness was sworn  
11                  in person.

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1                   THE VIDEOGRAPHER: We are now on  
2 record. This is the remote  
3 video-recorded deposition of Bruce  
4 Dubinsky.

5                   Today is Tuesday, March 29, 2022.  
6 The time is now 9:04 a.m. in the Eastern  
7 time zone.

8                   We're here in the matter of In Re,  
9 Customs and Tax Administration of the  
10 Kingdom of Denmark Et Al. All counsel  
11 have been noted on record.

12                  My name is Jose Rivera, remote  
13 video technician on behalf of Gregory  
14 Edwards LLC. At this time, will the  
15 reporter, Michael Friedman, on behalf of  
16 Gregory Edwards LLC, please swear in the  
17 witness.

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1 B R U C E D U B I N S K Y,  
2 called as a witness, having been first  
3 duly sworn according to law, testifies as follows:  
4  
5  
6

7 EXAMINATION BY MR. BONGIORNO:

8 Q Good morning, Mr. Dubinsky.  
9 Can you hear me okay?  
10 A I can, Mr. Bongiorno, yeah.  
11 Good morning.  
12 Q Okay. As you know, my name is Mike  
13 Bongiorno and I represent Mr. Richard  
14 Markowitz, Ms. Jocelyn Markowitz, and various  
15 pension plans in this action, and I'll be  
16 asking you questions today.

17 I know that you've given your  
18 deposition before, Mr. Dubinsky.

19 Have you ever done so remotely like  
20 we're doing it today?

21 A I have, yes.

22 Q Okay. So, obviously, you know  
23 since we're not in the same room, then it's  
24 going to be even more difficult than it is  
25 when we're -- when we are in the same room

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1 not to talk over each other, but we'll do our  
2 best, and, you know, we'll try to avoid that.  
3 It's inevitable at times but we'll do our  
4 best.

5 And I'm sure you know this, but if  
6 you have trouble understanding one of my  
7 questions, either because of its content or,  
8 obviously, because you can't hear me for  
9 whatever reason, just say so before  
10 answering.

11 Okay?

12 A I will do that, yes.

13 Q Okay. And you know this, too, but  
14 just to remind you, if you need a break, let  
15 the court reporter know, let me know, and  
16 we'll take a break as long as there's no  
17 question pending, unless there's some  
18 specific reason to do that. And I'll try to  
19 take a break every hour, a little over an  
20 hour or so anyway.

21 Do you have a document binder in  
22 front of you that was provided to you this  
23 morning?

24 A I do, yes.

25 Q Okay. Did you bring any other

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1 documents with you today?

2 A I did not.

3 Q Okay. And where are you physically  
4 located today for this deposition?

5 A At the offices of Hughes Hubbard  
6 down in New York City, lower Manhattan.

7 Q And did you prepare for your  
8 deposition today?

9 A Yes, I have.

10 Q Okay. What did you do to prepare?

11 A I reviewed my reports that I issued  
12 in this case. There were three reports that  
13 I've issued in this case.

14 I reviewed documents related to  
15 those reports. I reviewed the reports of  
16 Dr. Carr. Dr. Carr had issued, I believe,  
17 three reports in this case, and that's  
18 basically going through documents in that  
19 regard.

20 Q What types of documents did you go  
21 through?

22 A I went back through things like --

23 MR. WEINSTEIN: Let me just -- I'll  
24 object on privileged grounds. You can  
25 give general categories of documents,

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1 but I just caution you to not get into  
2 specifics. To the extent that any  
3 review was done with or at the direction  
4 of counsel.

5 A So, in general, just looking at my  
6 report, the footnotes where I footnote  
7 reference certain documents in general. That  
8 might have been trade confirmations, things  
9 related to the matter in the case.

10 Q Did you review any deposition  
11 transcripts in order to prepare for today?

12 A I don't recall if I went back  
13 through any of the deposition transcripts.  
14 Again, I may have, but nothing is jumping out  
15 in particular.

16 There were transcripts that were --

17 Q Did you --

18 A There were transcripts listed in my  
19 report. Those would have the ones if I went  
20 back to those that I looked at.

21 Q What about -- you know who Mr. Wade  
22 is.

23 Correct?

24 A Yes, generally. I've never met the  
25 man, but I know the name.

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1 Q You know he's an expert in this  
2 case, has been designated as an expert in  
3 this case?

4 A That's my understanding.

5 Q Okay. Have you seen his deposition  
6 transcript?

7 A I have not.

8 Q Okay. When were you first  
9 contacted about this case?

10 A I believe it was April 2021, last  
11 year.

12 Q What has your total compensation  
13 been so far for this engagement?

14 A I believe the fees that have been  
15 billed to date are about \$1.5 million.

16 Q Is anyone else working with you on  
17 this matter?

18 A Yes, I do have associates that are  
19 working with me on this matter.

20 Q Who?

21 A There are basically three main  
22 associates working with me on this matter; a  
23 gentleman named John Emperiali, Rachel  
24 Altman, and Caitlyn Thomas.

25 Q Okay. Can you tell me what they

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1 have done in this matter?

2 A All three of them had different  
3 roles, working under my direction and  
4 supervision, to go through documents, to  
5 review materials in the case, to gather  
6 information for me, and assist me just like  
7 they would on any case.

8 Q So are these folks who work with  
9 you regularly?

10 A They are. So just to clarify, I  
11 had left my company, basically gone on senior  
12 status from my prior company, which was  
13 called Duff & Phelps, it's now known as  
14 Kroll.

15 And so I'd gone on senior status  
16 last year on April 1st, basically retired,  
17 and I set up my own consulting company called  
18 Dubinsky Consulting LLC and I have an  
19 arrangement back with Kroll where I can  
20 utilize the staff that used to work for me at  
21 the firm on cases if I need assistance.

22 Q And are the three people that you  
23 just mentioned, are they employees of Kroll?

24 A They are, yes.

25 Q And they are folks that you worked

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1 with when you were at that company?

2 A Correct.

3 Q And you continue to work with them  
4 now that you've established your own entity.

5 Is that right?

6 A Correct.

7 Q In connection with this assignment,  
8 did you ask to interview anyone at SKAT?

9 A I did not.

10 Q Okay. Have you ever spoken to  
11 anyone at SKAT?

12 A No, I have not.

13 Q Did you review any notes of any  
14 interviews that anybody else conducted with  
15 anyone at SKAT?

16 A No, I have not.

17 Q And you mentioned that you reviewed  
18 deposition transcripts.

19 Are all the deposition transcripts  
20 that you reviewed listed in your reports?

21 A That's correct, yes.

22 Q Okay. I want to mark, from your  
23 notebook in front of you, your reports and  
24 your list of prior testimony.

25 MR. BONGIORNO: I'd ask that they

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1       be marked -- Tab 5200 is your initial  
2       report as revised. 5201 will be your  
3       rebuttal report. 5202 will be your  
4       reply report, and 5203 will be your  
5       revised list of prior testimony.

6                   (Whereupon the above mentioned was  
7       marked for identification.)

8       A    Okay. I see those.

9       Q    Okay. And have you reviewed --

10                MR. WEINSTEIN: I'm sorry,  
11                Mr. Bongiorno. If we could just make  
12                clear that the reports as marked do not  
13                have the attachments to them. Is that  
14                correct? At least the copies we were  
15                provided don't. So I just want to make  
16                sure what's been marked is clear, that  
17                it's the reports but not the  
18                attachments.

19                MR. BONGIORNO: Okay.

20                MR. WEINSTEIN: Is that right? Are  
21                we on the same page?

22                MR. BONGIORNO: Yes.

23                MR. WEINSTEIN: Okay.

24       Q    And Mr. Dubinsky, I believe you  
25       said you reviewed these reports, your three

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1 reports again to prepare for the deposition.

2 Is that right?

3 A That's correct.

4 Q Okay. When you reviewed them in  
5 preparation for this deposition, did you  
6 identify anything that was inaccurate in the  
7 reports?

8 A No, I did not.

9 Q So there isn't anything in those  
10 reports that you want to correct today.

11 Is that right?

12 A That is correct. There's nothing  
13 that has come to my attention that would be  
14 incorrect.

15 Q Are you working on any -- anything  
16 additional with regard to this case at the  
17 present time?

18 A No, I'm not.

19 Q Do you have any additional opinions  
20 beyond those contained in your reports on  
21 which you plan to testify in this matter?

22 A No. I would say this. The  
23 opinions, the basis for my opinions are set  
24 forth in the three reports; the initial  
25 report, the rebuttal report, and my reply

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1 report.

2 To the extent there are -- I know  
3 Mr. Carr -- or Dr. Carr's deposition is  
4 coming up. To the extent that he may say  
5 something or bring up new ideas or opinions,  
6 that I'll reserve the right to comment on  
7 those.

8 But sitting here today, I'm not  
9 aware of anything that would be additional.

10 Q Okay. And you said you reviewed  
11 Dr. Carr's three reports.

12 A Correct?

13 Q Correct.

14 Q Okay. And I believe you have those  
15 in your binder in front of you as well. At  
16 Tab 5100 is Carr's initial report. 5101 is  
17 his rebuttal report, and 5102 is his reply  
18 report.

19 Q Do you have those in front of you?

20 A I do, yes.

21 Q Okay.

22 MR. BONGIORNO: They were marked as  
23 Carr's deposition -- I'm sorry. Carr's  
24 deposition, that hasn't happened yet.

25 They were marked at Wade's

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1 deposition.

2 Q Prior to this litigation, had you  
3 ever heard of Dr. Carr?

4 A No, I have not.

5 Q Would you agree, having reviewed  
6 his credentials and his reports, that he's  
7 well-qualified in the areas of accounting?

8 MR. WEINSTEIN: Objection to form.

9 A Again, I'm not here to opine on his  
10 credentials. He has his credentials, I think  
11 they'll speak for themselves.

12 But generally, he has accounting  
13 credentials and I'll leave it at that.

14 Q What about financial economics? Do  
15 you have a view as to whether or not he's  
16 qualified in that area?

17 MR. WEINSTEIN: Objection to form.

18 A No, I think that's -- you're asking  
19 for a legal conclusion. The judge would have  
20 to determine that in this case.

21 He does have some experience in  
22 that area, so I would leave it at that.

23 Q You don't have any reason to doubt  
24 his expertise in those fields, though, do  
25 you?

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1 MR. WEINSTEIN: Objection to form.

2 A Again, I'm not here to comment on  
3 his expertise in any one field.

4 Q You've been designated as an expert  
5 over a hundred times.

6 Is that right?

7 A That's correct.

8 Q Okay. And you've testified over 75  
9 times.

10 Is that right?

11 A I think at trial, I think it's  
12 about 80 times now, and deposition more than  
13 that, yes. But many times.

14 Q When is the last time you testified  
15 in a deposition?

16 A In a deposition? I would have to  
17 go back and look. The last trial was a  
18 couple weeks ago in the Southern District  
19 here in New York.

20 Q And what case was that?

21 A That was the -- it was a Madoff  
22 related case. The trustee was suing a  
23 company called RAR, I believe. I'd have to  
24 look.

25 I think it was RAR Entrepreneurial

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1 Fund Limited.

2 Q And in many of the cases that  
3 you've testified in, those were about alleged  
4 fraud.

5 Right?

6 A I've testified in quite a few cases  
7 about fraud or alleged fraud or related  
8 issues. I've also testified on cases on  
9 damages, commercial damages, valuation  
10 issues, accounting issues, and a variety of  
11 other SEC topics, investment advisory topics.

12 So it was quite a wide range of  
13 expertise.

14 Q But many of them were about fraud,  
15 weren't they?

16 A Yes. Many of the cases have been  
17 about fraud, yes.

18 Q And in those cases, in many of  
19 them, you found that there was fraud.

20 Correct?

21 A Well, I'd have to go back. I don't  
22 think that I've concluded in court that  
23 someone committed fraud.

24 That's a legal finding. That would  
25 be up to the trier of fact. I think what --

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1 I've either testified about either red flags  
2 of fraud, indicia of fraud, fictitious nature  
3 of transactions.

4 I think the ultimate findings, I  
5 mean, committing fraud, is a legal finding.

6 Q Okay. So you don't have any  
7 opinion as to whether or not there was any  
8 fraud in this case, I take it.

9 Right?

10 A Again. I'm not opining on legal  
11 issues. I think the judge or jury in this  
12 case would have to opine on that.

13 That's why I haven't opined on the  
14 guilt of any person or party in that regard.

15 Q Okay. I'm not asking about guilt  
16 or innocence, sir. It's not a criminal case.

17 I'm asking whether or not you have  
18 an opinion in this case as to whether there  
19 was any fraud?

20 A Again, I think that's a legal  
21 finding. I think my report speaks for  
22 itself.

23 I concluded that there were  
24 fictitious transactions, that stock didn't  
25 exist, dividends weren't paid. But I think

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1 the ultimate conclusion of whether there was  
2 fraud will be up to the judge or jury in this  
3 case.

4 Q Okay. I understand your report  
5 speaks for itself, sir, but this is a  
6 deposition so I'm going to be asking you  
7 questions about your report.

8 Okay? You understand that, right?

9 A Yes.

10 Q Okay. And you just said a moment  
11 ago that you're not reaching any legal  
12 conclusions. You're not an attorney.

13 Right?

14 A That's correct. I'm not.

15 Q Are you offering any opinion in  
16 this case about whether the plans were the  
17 beneficial owners of the dividends?

18 MR. WEINSTEIN: Objection to form.

19 A Again, I think that's asking for a  
20 legal conclusion, and I'm not issuing that  
21 legal conclusion.

22 Q Okay. And so you're not offering  
23 any opinion, either about whether the plans  
24 were the beneficial owner of dividends under  
25 Danish tax law.

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1 Right?

2 MR. WEINSTEIN: Objection, form.

3 A Again, I'm not opining anything as  
4 to Danish tax law. I'm not a Danish tax law  
5 expert and not being offered as one.

6 Q You're not an expert on what it  
7 means to be the beneficial owner of dividends  
8 under Danish tax law.

9 Right?

10 A I would agree with you.

11 Q Okay. And you're not offering any  
12 opinion about legal ownership under Danish  
13 law.

14 Right?

15 A I would agree with you. That would  
16 call for a legal conclusion.

17 Q And similarly, you're not offering  
18 an opinion about legal ownership under U.S.  
19 law, then.

20 Right?

21 A I would agree with you again. That  
22 would call for a legal opinion.

23 I'm not a lawyer.

24 Q Okay. And you're not offering an  
25 opinion about the intent of the defendants in

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1 this case, are you?

2 A No, I'm not.

3 Q And you're also not offering an  
4 opinion about whether SKAT reasonably relied  
5 on the reclaim applications at issue in the  
6 case.

7 Right?

8 A That is correct. I am not.

9 Q Okay. Mr. Dubinsky, have you ever  
10 worked as a trader?

11 A I have not worked as a trader, no.

12 Q So you don't have any experience in  
13 trading Danish securities.

14 Is that a fair statement?

15 A I would agree with you, yes.

16 Q Have you ever engaged in dividend  
17 arbitrage trading?

18 A I have not.

19 Q Do you have any experience in  
20 arranging structured transactions?

21 MR. WEINSTEIN: Objection to form.

22 A I have not. I'm just trying to  
23 think.

24 I have not been involved in  
25 arranging structured transactions.

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1 Q You're not an expert in trade  
2 clearing, are you?

3 A I wouldn't consider myself an  
4 expert in trade clearing. I have some  
5 experience in looking at that aside from this  
6 case, but I wouldn't consider myself an  
7 expert in trade clearing.

8 Q What about trade settlement? Do  
9 you consider yourself an expert in trade  
10 settlement?

11 A Again, I have some experience in  
12 that area aside from this case, but I  
13 wouldn't hold myself out as an expert in  
14 that.

15 Q Have you ever worked at a financial  
16 firm that was a member of the New York stock  
17 exchange?

18 A I don't believe so, no.

19 Q Have you ever worked at a firm that  
20 was a member of the London stock exchange?

21 A No.

22 Q Have you ever worked at a firm that  
23 was regulated by FINRA?

24 A Yes.

25 Q What firm was that?

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1 A Several firms. One was Bridgewater  
2 Financial Associates. One was called SOL,  
3 S-O-L, Capital, and one was Duff & Phelps.  
4 It was a predecessor to Kroll.

5 Q What was the second one you  
6 mentioned?

7 A SOL Capital, S-O-L Capital.

8 Q What did you do at Bridgewater?

9 A I was a registered investment  
10 advisor representative for Bridgewater and so  
11 I had high net worth clients that I did  
12 investment advisory services for, and  
13 arranged their portfolios in investments.

14 Q When did you work at Bridgewater?

15 A That would have been late '90s,  
16 early 2000s, in that time period.

17 Q What did you do at SOL Capital?

18 A Same thing. I had -- this was  
19 during the time I had an accounting practice.  
20 I have a CPA and I had high net worth  
21 individual clients.

22 And I got licensed as an IRA rep  
23 and SOL was an investment advisor registered  
24 with FINRA, regulated with FINRA, and I did  
25 the same thing. I advised high net worth

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1 individual clients and pension plans,  
2 retirement plans on investments.

3 Q And at Duff & Phelps, you did this  
4 type of work that you do now.

5 Is that right?

6 A No, I did not. So when I joined  
7 Duff & Phelps, I let my license lapse at that  
8 point because I was not doing that work  
9 anymore.

10 And just to maintain the  
11 registration requirements was too much red  
12 tape. So I let the license lapse at that  
13 point.

14 Q So what did you do at Duff &  
15 Phelps?

16 A I was a managing director at Duff &  
17 Phelps in their disputes and investigation  
18 practice, and so I handled everything from  
19 investigations to commercial disputes, expert  
20 witness work.

21 That was my role at Duff & Phelps.

22 Q Okay. And in this matter, you were  
23 retained to do a forensic accounting of the  
24 cash flows of the tax refund payments paid  
25 out by SKAT.

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1 Is that right?

2 A Among other things, yes, that was  
3 part of what I was asked to do.

4 Q Okay. And your forensic accounting  
5 was of the payments that allegedly went to  
6 Solo clients.

7 Right?

8 A That portion of the work was, yes,  
9 looking at the refund claim payments paid by  
10 SKAT and the money flow from those payments,  
11 where did the money go.

12 Q You did not do a forensic  
13 accounting of SKAT, did you?

14 A No, I did not.

15 Q Okay. You did not do a forensic  
16 accounting to assess whether the withholding  
17 tax associated with the refund claims in this  
18 case was actually paid to SKAT.

19 Right?

20 A No, I did not.

21 Q Did you develop a view of whether  
22 SKAT collected dividend withholding tax from  
23 any of the sellers in the trades associated  
24 with this case?

25 MR. WEINSTEIN: Objection to form.

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1 A I'm not sure what you mean, did I  
2 develop a view. It's just my basic  
3 understanding that an issuer, when it pays a  
4 dividend in Denmark, would submit the  
5 withholding directly to SKAT.

6 That was my understanding.

7 Q But you didn't develop a view as to  
8 whether SKAT collected dividend withholding  
9 tax from any of the sellers in the trades in  
10 this case?

11 MR. WEINSTEIN: Objection to form.

12 A Which sellers are you talking  
13 about? I'm confused.

14 Q You're aware that -- well, you  
15 analyzed various transactions associated with  
16 the opinions that you gave in this case.

17 Right?

18 A Correct.

19 Q And those transactions involved  
20 numerous parties.

21 Correct?

22 A Yes.

23 Q And some of those parties were  
24 sellers.

25 Right?

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1 MR. WEINSTEIN: Objection to form.

2 A Well, again, if you could be more  
3 specific as to which ones you're talking  
4 about?

5 Q You don't know what I mean when I  
6 talk about sellers in a transaction in this  
7 case?

8 MR. WEINSTEIN: Objection to form.

9 Q You're unable to think of any?

10 A Again, I just want to make sure  
11 we're on the same page. If you give me a  
12 specific, then I can answer your question.

13 Q You can't think of the name of a  
14 single seller in a single transaction in this  
15 case?

16 MR. WEINSTEIN: Objection to form.

17 A Well, again, I'm not here to go  
18 back and forth.

19 Are you talking about the purported  
20 short sellers? Is that what you're asking?

21 I'm just trying to get  
22 clarification, Michael.

23 Q Sure. Short sellers, folks who  
24 sold to the pension plans?

25 MR. WEINSTEIN: Objection to form.

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1           A    So what I would say is -- and maybe  
2    we can agree for the deposition -- but when  
3    you talk about sellers, I'm going to talk  
4    about purported sellers. And yes, so for  
5    instance, DDC Cayman would be a purported  
6    short seller.

7                   So that's how I would define that.

8           Q    Okay. That's fine. And my  
9    question to you is whether -- we'll use DDC  
10   Cayman -- did you develop a view as to  
11   whether SKAT collected dividend withholding  
12   tax from DDC Cayman?

13                   MR. WEINSTEIN: Objection to form.

14           A    My view would be that withholding  
15   tax was paid -- should have been paid by the  
16   issuer of the Danish security directly to  
17   SKAT as withholding tax, and it wouldn't have  
18   come directly from DDC Cayman in that regard.

19                   So that would be my view, if that's  
20   what you're asking.

21           Q    Okay. Did you look to see how much  
22   any of these issuers paid to SKAT in dividend  
23   withholding tax?

24           A    No, I didn't. Let me just clarify  
25   and see if I understand the question.

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1                   For instance, like Novo Nordisk,  
2                   are you asking if I went back to see how much  
3                   money Novo Nordisk, for a certain dividend  
4                   that was declared by that company, by that  
5                   issuer, paid to SKAT on a particular date?

6                   Is that what you're asking?

7                   Q    That's my question, yes.

8                   Did you look to see how much any of  
9                   these issuers paid in dividend withholding  
10                  tax?

11                  MR. WEINSTEIN: Objection to form.

12                  A    No, I did not.

13                  Q    So you don't know either way how  
14                  much any of these issuers paid in withholding  
15                  tax in connection with any of the dividends.

16                  Is that right?

17                  MR. WEINSTEIN: Objection.

18                  A    That is correct. To SKAT.

19                  Q    In working on your reports, you  
20                  reviewed documents that you understood came  
21                  from Solo Capital.

22                  Right?

23                  A    Correct.

24                  Q    Okay. And you understand that  
25                  Solo Capital is not a party to this

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1 litigation?

2 A That's my understanding to this  
3 particular litigation, yes.

4 Q Okay. You had access to a set of  
5 documents that came from an entity called  
6 Elysium Global.

7 Right?

8 A Yes.

9 Q Okay. And do you have any  
10 understanding of what those documents  
11 represent?

12 A I think in general, my  
13 understanding was those were documents that  
14 Solo had maintained that was part of a Solo  
15 umbrella of companies. So there were a lot  
16 of different documents in that database.

17 But they were business records  
18 related to Solo and various entities under  
19 Solo's control.

20 Q Okay. Why don't you open up your  
21 report, your initial report, which is  
22 Exhibit 5200.

23 A Okay.

24 Q And I want you to go to Footnote 5  
25 on a Page 8.

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1                   Okay?

2                   A    Okay.

3                   Q    I'm going to read the last couple  
4                   of sentences of that footnote.

5                   "Further, I have been informed that  
6                   a hard drive potentially containing Solo  
7                   Capital and/or related entities' documents  
8                   has been found, but is encrypted and cannot  
9                   be accessed. I do not believe that these  
10                  facts impact the conclusions of this report  
11                  and reserve the right to supplement this  
12                  report if/when more documents become  
13                  available."

14                  Do you see that?

15                  A    I do see that, yes.

16                  Q    Did I read that correctly?

17                  A    You did. That was half of the  
18                  footnote, but that portion you did read  
19                  correctly.

20                  Q    After you submitted your reports,  
21                  did you receive any additional Solo  
22                  documents?

23                  A    Not that I recall, no.

24                  Q    Based on the statement in this  
25                  footnote, is it fair to say that there are

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1 documents from Solo Capital that you did not  
2 review?

3 A Yes, that's correct. I mean, the  
4 encrypted drive, as I said down there. And  
5 then there was a -- at the beginning of that  
6 footnote it also talks about -- I think  
7 there's a privilege review that was ongoing  
8 and that those documents had not been  
9 produced yet.

10 Q And you don't know what's in the  
11 documents on the encrypted hard drive.

12 Right?

13 A That is correct.

14 Q There could be anything on that  
15 hard drive.

16 Right?

17 A Theoretically, yes.

18 Q You don't have any idea if that  
19 hard drive contains Solo records reflecting  
20 holdings of shares in Danish companies.

21 Right?

22 A Not having access to it, I don't  
23 know what's on there, but I wouldn't expect  
24 to see shares of Danish companies  
25 being -- the documents on that encrypted

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1 drive when I haven't seen them anywhere else.  
2 In the voluminous amount of records that have  
3 been produced in this case, it wouldn't make  
4 sense to me.

5                   But again, I don't know what's on  
6 there. I can't get into that encrypted  
7 drive.

8                   I don't think anybody can.

9                   Q    Okay. So because you haven't seen  
10 them anywhere else, you assume they're not on  
11 this encrypted hard drive either.

12                  Is that an assumption you made?

13                  A    That's an assumption that I've  
14 made, that there was a voluminous amount of  
15 records made available to me. There were --  
16 when you look at those records in conjunction  
17 with the information that came from the  
18 supposed sub-custodians, from J.P. Morgan,  
19 SEB and Sofgen, there's nothing that would  
20 lead me to believe that there would be  
21 documents from -- that would show holdings of  
22 Danish securities that relate to the Solo  
23 transactions on that encrypted drive.

24                  Q    If the hard drive contained records  
25 of holdings in Danish securities at

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1 Solo Capital, would that affect your  
2 conclusions?

3 MR. WEINSTEIN: Objection to form.

4 A Well, if there are documents from  
5 sub-custodians, knowing that the Danish  
6 securities were actually held in custodial --  
7 you know, in custody, then sure, that would  
8 affect my opinion.

9 But I don't see how that's  
10 possible. And sub-custodians that were  
11 identified by Mr. Shah and Solo lawyers at  
12 Reed Smith indicated that they didn't have  
13 any holdings relating to these transactions.

14 So I don't know beyond that what  
15 could be on that hard drive.

16 Q You don't know if that hard drive  
17 contains evidence of additional  
18 sub-custodians that Solo used for Danish  
19 securities, do you?

20 MR. WEINSTEIN: Objection, asked  
21 and answered.

22 A Well, again, I mean, it's -- that's  
23 kind of obvious. If I can't get into the  
24 hard drive, I don't know what's on there.

25 But I would think that Mr. Shah, in

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1 the U.K. proceedings, would have had every  
2 reason to identify proper sub-custodians  
3 holding these shares because he was being  
4 accused that these transactions were  
5 fraudulent or didn't properly exist. That  
6 hasn't -- you know, he identified what he  
7 identified.

8 So I don't know -- again, I don't  
9 know what's on that hard drive, but there's  
10 nothing to lead me to believe that in the  
11 evidence I have seen in this case that there  
12 would be anything of such nature on that hard  
13 drive.

14 Q So you're relying in part on what  
15 Mr. Shah said in order to develop your view  
16 in that regard?

17 Is that a fair statement?

18 A I think that's a fair statement in  
19 part. Mr. Shah, Reed Smith had indicated  
20 when they responded to the FCA's  
21 investigation that Sofgen was the custodian  
22 during the relevant period when they were  
23 referencing on their letter what the relevant  
24 period was.

25 So I think it's the totality of the

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1 information. I would have thought that --  
2 that in all of the other documents that were  
3 made available, there would have been some  
4 mention of other sub-custodians that would  
5 lead me to believe, you know, if there was,  
6 that maybe something was on that hard drive,  
7 and there's nothing that's come to my  
8 attention in that regard.

9 Q Do you know how much information is  
10 contained on the hard drive?

11 A No. Again, I don't have custody of  
12 the hard drive. And I don't know what's on  
13 the hard drive.

14 I think I've answered that several  
15 times.

16 (Whereupon a discussion was held  
17 off the record.)

18 Q Mr. Dubinsky, I wasn't asking you  
19 in that question if you knew what was on the  
20 hard drive. The question was if you knew how  
21 much information was on the hard drive.

22 Do you know how much information is  
23 on the hard drive?

24 MR. WEINSTEIN: Objection to form.

25 A I do not.

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1 Q I didn't hear the answer. I'm  
2 sorry.

3 A I said I do not.

4 Q Okay. Mr. Dubinsky, did you  
5 develop an opinion as to whether or not the  
6 trades that you reviewed in this case were  
7 fake?

8 A Yes, I did.

9 Q And your opinion is that they were  
10 fake.

11 Right?

12 A That they were fictitious, that  
13 there was no stock backing up the trades.

14 MR. BONGIORNO: I'm sorry. His  
15 video and sound are both breaking up  
16 quite a bit on my end. I don't know if  
17 they are for anybody else?

18 THE VIDEOGRAPHER: Stand by. The  
19 time is 9:39 a.m. and we're going off  
20 the record.

21 (Brief recess taken.)

22 THE VIDEOGRAPHER: Stand by. The  
23 time is 9:42 a.m. and we're back on  
24 record.

25 Q Okay. Right before the break,

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1 Mr. Dubinsky, I asked you -- just to level, I  
2 had asked you if you developed an opinion  
3 that the trades were fake, and your answer  
4 was that they were fictitious, there was no  
5 stock backing up the trades.

6 In your experience, do trades that  
7 never happen get reported to stock exchanges?

8 A Trades that never happened? That's  
9 kind of a weird question. I'm not sure how  
10 to answer that.

11 So are you -- maybe re-ask the  
12 question. I don't know how to interpret  
13 that.

14 Q Sure. Okay. Well, you used the  
15 phrase or the word "fictitious," so I'll use  
16 your word, okay?

17 Is it -- in your experience, do  
18 fictitious trades get reported to stock  
19 exchanges?

20 MR. WEINSTEIN: Objection to form.

21 A Well, I guess -- are you asking me  
22 if somebody creates a fictitious transaction,  
23 would they report that to a stock exchange?

24 Is that what you're asking me?

25 Q I'm asking you whether or not -- in

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1 your experience, whether or not fictitious  
2 trades get reported to stock exchanges?

3 MR. WEINSTEIN: Objection to form.

4 A Again, I don't know how to answer  
5 the question, Mr. Bongiorno. If you're  
6 asking me if somebody creates a fake  
7 transaction, does that get reported to a  
8 stock exchange, it may or may not.

9 I don't know.

10 Q Have you ever seen what you viewed  
11 as a fictitious transaction get reported to a  
12 stock exchange?

13 MR. WEINSTEIN: Objection to form.

14 A I believe in the -- and I'd have to  
15 go back, but I believe in the work that I did  
16 on the Madoff case, Mr. Madoff was reporting  
17 to NASDAQ trades that had not happened just  
18 in terms of volume.

19 But beyond that, no, I haven't seen  
20 that.

21 Q You said "in terms of volume."  
22 What do you mean by that?

23 A Yes. And again, I'd have to go  
24 back, but I think when I was going through  
25 the records, there were reports that Madoff

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1 was filing with NASDAQ as to the volume of  
2 trading -- trades that he was doing, but  
3 there was nothing backing those trades up.

4 Q What about -- I'm not asking about  
5 volume of trades. I'm asking about specific  
6 trades.

7 Did you -- in your experience, have  
8 you ever seen specific trades that were  
9 fictitious reported to stock exchanges?

10 MR. WEINSTEIN: Objection to form.

11 A Again, I haven't. I haven't seen  
12 that. I haven't specifically looked for that  
13 in any of the investigations I've been  
14 involved in.

15 Q Did you look in this case to see  
16 whether or not any of these trades that you  
17 claim are fictitious were reported to stock  
18 exchanges?

19 MR. WEINSTEIN: Objection to form.

20 A I did not.

21 Q So you don't know either way  
22 whether or not the trades that you claim are  
23 fictitious in this case were reported to any  
24 stock exchange.

25 Is that a fair statement?

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1 A I don't know one way or the other.  
2 I didn't see -- in going through the  
3 documents, I didn't see any information that  
4 I recall where these trades were being  
5 reported.

6 I think these were all OTC trades,  
7 so they were off-exchange trades.

8 Q Does it matter?

9 A I don't recall seeing any documents  
10 that --

11 Q I apologize for interrupting you.  
12 Sorry. Your sound broke up on my end and I  
13 thought you were done.

14 But I can see from the realtime the  
15 rest of your answer.

16 A Right. I was just going to -- did  
17 it come through, the rest of the answer?

18 Q I can see it on my screen, but I  
19 can't hear it and I can't see you saying it.

20 MR. BONGIORNO: I think we should  
21 probably take a break because this is  
22 starting to get a little bit more  
23 challenging as we go forward.

24 THE VIDEOGRAPHER: Stand by. The  
25 time is 9:46 a.m. and we're going off

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1 the record.

2 (Brief recess taken.)

3 THE VIDEOGRAPHER: Stand by. The  
4 time is 9:56 a.m. and we're back on  
5 record.

6 Q Mr. Dubinsky, you mentioned before  
7 that you testified as an expert witness in  
8 various cases related to Madoff.

9 Right?

10 A Correct.

11 Q You did a forensic accounting of  
12 the Bernard L. Madoff investment securities.

13 Correct?

14 A Correct.

15 Q And you concluded that Madoff  
16 engaged in fictitious trading.

17 Correct?

18 A Correct.

19 Q And this morning in your report  
20 you've suggested some similarities between  
21 this case and the Madoff case.

22 Right?

23 A That's correct.

24 Q Okay. And in fact, you say that  
25 "like the Madoff case, the fact that there

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1 are trading documents that reflects trades is  
2 not proof that the transactions here were  
3 real."

4 Right?

5 A That is correct.

6 Q Why don't you turn to Tab 5209 of  
7 your binder? We can mark that as the next  
8 exhibit.

9 MR. BONGIORNO: Mark 5209.

10 (Whereupon the above mentioned was  
11 marked for Identification.)

12 Q Do you have that in front of you?

13 A Yes, I do.

14 Q Okay. And that document, I hope,  
15 is a declaration you submitted in litigation  
16 in the Southern District of New York  
17 bankruptcy court related to the Madoff case?

18 A Correct.

19 Q Before we go on, I think you might  
20 want to tip the camera just a little bit.

21 You're not nearly as -- there you go. Good.

22 Thank you.

23 Now, if you turn to the fifth page  
24 of Exhibit 5209, there's -- it's your expert  
25 report that you submitted in that case.

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1 Right?

2 A Yes, that's correct. It was one of  
3 the earlier reports, yes.

4 Q Okay. In the course of preparing  
5 that report, you looked at a lot of the  
6 Madoff records.

7 Right?

8 A Correct. Among other things, but  
9 yes.

10 Q And you found that Madoff generated  
11 fake records to look like records from the  
12 DTC.

13 Right?

14 A Correct.

15 Q DTC is the Depository Trust  
16 Company.

17 Right?

18 A That's correct.

19 Q And one of the ways that you  
20 determined that was to look at metadata.

21 Right?

22 A Correct.

23 Q Let's turn to Page 71 of this  
24 expert report, which is Exhibit 5209, and  
25 look at Paragraph 175.

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1                   Okay?

2                   A    Okay. I have that.

3                   Q    Okay. And I want to point you to  
4                   the sentence that says, "The metadata  
5                   contained within these documents show that  
6                   the documents were created after the supposed  
7                   date of the screen lookup inquiry, as  
8                   depicted in the text within those documents."

9                   Do you see that?

10                  A    I do see that, yes.

11                  Q    Okay. And let's turn over to  
12                  Pages 72 and 73 of Exhibit 209 where you  
13                  discuss that the metadata of these DTC  
14                  reports show that they were created several  
15                  days after the date noted in the report.

16                  Okay?

17                  A    Okay.

18                  Q    And I'll just read a part of 178.  
19                  "The metadata shows this document  
20                  was actually created on December 19, 2006 at  
21                  11:16:00 a.m., 20 days after the date which  
22                  appears in the text of the document."

23                  Do you see that?

24                  A    I do see that, yes.

25                  Q    And this information led you to

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1 conclude that these trades did not occur.

2 Correct?

3 A This was one piece of information  
4 among many, many things that I've looked at  
5 in many analysis. But this was one piece of  
6 information that led me to conclude that the  
7 trades did not occur.

8 Q Okay. In this case, the case that  
9 we're here for today, did you review any  
10 metadata of Solo's documents?

11 A There was some metadata that I did  
12 review. There was -- I think it was called  
13 "End Of Day Trading Spreadsheets" and I  
14 recall looking at the metadata in some of  
15 those Excel native documents that were  
16 produced.

17 And some of that indicated the  
18 individual that prepared those was somebody  
19 at Solo. I'm drawing a blank on the guy's  
20 name right now, but I recall looking at  
21 several of the native documents for that.

22 Q Did you look at any metadata of  
23 broker documents?

24 A Not that I recall, no.

25 Q How about from interdealer brokers?

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1 Did you review any metadata from any  
2 interdealer brokers?

3 A No.

4 Q You don't offer any opinion in this  
5 case that's based on any of the metadata that  
6 you saw, do you?

7 A No.

8 Q There wasn't anything in the  
9 metadata that you just mentioned that you saw  
10 that would indicate that the documents were  
11 created after the trades they appear to  
12 reflect, is there?

13 A Well, the documents that I was  
14 referring to were capturing information that  
15 appear to be historical. I was looking at it  
16 just to see if the -- if those documents were  
17 prepared contemporaneously with the business  
18 records of Solo.

19 And the metadata, as I recall, did  
20 show that -- who the author was and the date  
21 those were created in the 2013 and '14 and  
22 '15 time frame.

23 But beyond that I didn't look for  
24 anything else.

25 Q Okay. And so my question to you is

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1       whether any of the metadata in this case that  
2       you've seen indicates that the trades, that  
3       they were created after the fact.

4            In other words, they were meant to  
5       reflect something that occurred previously,  
6       like you found in the Madoff case?

7            MR. WEINSTEIN: Objection to form.

8       A    Your voice dropped off. I couldn't  
9       hear the end of the question, if you can  
10      repeat it.

11      Q    I said, "like you found in the  
12      Madoff case?"

13      A    No, right before that you said  
14      something I couldn't hear. Maybe just repeat  
15      the whole question or someone can read it  
16      back and --

17      Q    I can just start over.

18            My question to you, and I'll  
19      rephrase the question, is whether or not you  
20      found any metadata in this case that, like  
21      you found in the Madoff case, indicated to  
22      you that the documents were created after the  
23      date which appears in the text of the  
24      document?

25            MR. WEINSTEIN: Objection to form.

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1           A    Well, the spreadsheet that I looked  
2    at or the end of day spreadsheets had  
3    historical information on there. So the date  
4    I think that was in the metadata would  
5    indicate when it was updated. So that would  
6    have been updated after the purported trades  
7    occurred.

8                   But nothing like what  
9    you're -- what you asked me. There's nothing  
10   like what I found when we were just talking  
11   about the Madoff case where the DTC documents  
12   were created, made to appear that they were  
13   created on a certain date, when, in fact,  
14   they were created afterwards.

15           Q    Okay. Mr. Dubinsky, in your report  
16    you discuss several groups of pension plans,  
17    and you defined two of those groups as the  
18    Argre plans and the Kaye Scholer plans.

19                   Do you recall Shah?

20           A    Yes. Let me just get to the  
21    report.

22                   Are we done with that other  
23    exhibit?

24           Q    Yeah. You can go to your opening  
25    report at -- which is Exhibit 5200, and I'll

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1 direct you from there.

2 But that's the report I'm going to  
3 be referencing.

4 A Okay. Thank you.

5 Q And I'll be going to Paragraph 22  
6 on Page 13, but if there's something else you  
7 want to look at to respond to that last  
8 question, feel free.

9 A What was the last question?

10 Q It was whether or not you recall  
11 referring to two groups of pension plans in  
12 your report as "the Argre plan" and "the  
13 Kaye Scholer" -- "Argre plans" and "the  
14 Kaye Scholer plans?"

15 A Those were two of the groups. I  
16 think there were two other groups I referred  
17 to as well, "the Lehman plans" and "the Zeta  
18 plans."

19 But yes, on Page 12 of my report,  
20 Paragraph 20 through 23, I reference "the  
21 Argre plans," and then "the Kaye Scholer  
22 plans" as Paragraph 24 through 27.

23 Q Okay. And I'm going to point you  
24 to Paragraph 22 now, which I think you just  
25 said you have in front of you. I'm going to

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1 read to you the second sentence.

2 "In each partnership agreement, the  
3 plan undertook all the Solo trades in its  
4 name as an undisclosed agent or nominee for  
5 the partnership and transferred almost all of  
6 the proceeds that SKAT paid the plan, meta  
7 fees to Solo and others, to entities  
8 controlled by the Argre principals."

9 Did I read that correctly?

10 A Yes.

11 Q Okay. You refer to an "undisclosed  
12 agent or nominee for the partnership."

13 Do you see that?

14 A Yes.

15 Q Is that a legal conclusion, sir?

16 A No, it's not.

17 Q On what basis are you qualified to  
18 say that "the plans undertook all the Solo  
19 trades in its name as an undisclosed agent or  
20 nominee for the partnership?"

21 A If I recall, the -- there were  
22 partnership agreements. And in the  
23 partnership agreements, there was a section  
24 towards the back, if I recall properly, that  
25 indicated the plans would act as nominee or

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1 could act as nominee for the purported  
2 trades.

3 So I think that's where I was  
4 getting that from.

5 Q So you reviewed the partnership  
6 plans?

7 A The partnership agreement? Is that  
8 what you're asking?

9 Q Yes, sir. Partnership agreement.

10 A Yes.

11 Q And it's on the basis of your  
12 review of those partnership agreements that  
13 you determined that "the plans undertook all  
14 Solo trades in its name as an undisclosed  
15 agent or nominee?"

16 A I believe that was the basis of  
17 that statement, yes.

18 Q And in Paragraph 27, you say  
19 something similar. I'm going to point you to  
20 that now.

21 A Yes, I see that.

22 Q Similar to the -- and I'm reading  
23 from Paragraph 27 of your opening report,  
24 which is Exhibit 5200 -- "Similar to the  
25 Argre partnership arrangements, in each of

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1 the 26 partnerships, the plan undertook all  
2 Solo trades in its name as an undisclosed  
3 agent or nominee for the partnership, and  
4 transferred almost all of the proceeds that  
5 SKAT paid to the plan, meta fees to Solo  
6 Capital and others, to two of the three  
7 trusts. "

8 Do you see that?

9 A Yes, I see that.

10 Q And that's in reference to what you  
11 call "the Kaye Scholer plans."

12 Right?

13 A Correct.

14 Q Okay. And you said you read the  
15 Argre plan partnership agreements?

16 A Yes. And -- as well as the  
17 Kaye Scholer plan partnership agreements.

18 Yes, that's correct.

19 Q Did you review any of the schedules  
20 to the partnership agreements?

21 A Yes. So I would have reviewed the  
22 schedules that were attached. There were  
23 many I recall that weren't filled out, if my  
24 memory serves me.

25 But if you have one, I'm happy to

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1 look at it.

2 Q We will.

3 Are you familiar with the  
4 provisions of these agreements regarding the  
5 quote-unquote "custody of securities?"

6 A I would have to go back and look at  
7 the clause that you're talking about.

8 Q You don't recall as you sit here  
9 today?

10 A Not off the top of my head, no.

11 Q Let's look at Tab 5210 of your  
12 binder.

13 MR. BONGIORNO: I'd like to mark  
14 that as the next exhibit, 5210.

15 (Whereupon the above mentioned was  
16 marked for Identification.)

17 Q Do you have that one in front of  
18 you?

19 A I do.

20 Q Okay. Have you seen this before?

21 A I don't know if I put eyes on this  
22 particular one. I've seen ones that are  
23 similar to this.

24 I may have.

25 Q So the -- this document looks

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1       familiar to you even though you may not have  
2       seen this specific one?

3               Is that fair?

4       A    It's fair. I think most of the  
5       partnership agreements that I saw were cookie  
6       cutters of each other, so it does look  
7       familiar.

8       Q    Okay. Delvian was an Argre plan.

9               Right?

10      A    I'd have to go look from my report.  
11       I categorized them by groups.

12               I don't recall.

13      Q    Okay. I mentioned a moment ago  
14       custody of securities. I'll point you to  
15       that section now so you can see it.

16               It's Section 12 on Page 4 of this  
17       exhibit, 5210.

18               Can you read that section to  
19       yourself, sir?

20      A    Okay.

21               (Witness reviewing.)

22               Okay.

23      Q    Okay. Now I want to focus your  
24       attention on the bottom of that section after  
25       the last semicolon, "and provided further,

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1 however, that the partnerships shall have no  
2 claim of a nominee arrangement with respect  
3 to any property of a partner unless such  
4 property is so set forth on Schedule A."

5 Do you see that?

6 A I do see that, yes.

7 Q And when you reviewed these  
8 agreements, did you review the Schedule A?

9 A Yes.

10 Q Now let's turn to the last page of  
11 the document, which is Schedule A.

12 A Okay.

13 Q This doesn't list any Solo account.

14 Right?

15 A It does not.

16 Q It's blank.

17 Correct?

18 A Correct.

19 Q Okay. Let's go -- let's mark the  
20 next exhibit, 5211, which is at Tab 5211 in  
21 your binder.

22 MR. BONGIORNO: Mark 5211.

23 (Whereupon the above mentioned was  
24 marked for identification.)

25 Q Do you have that in front of you?

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1 A I do.

2 Q Is it the general partnership  
3 agreement of Roadcraft Technologies General  
4 Partnership?

5 Is that what you have in front of  
6 you, Mr. Dubinsky?

7 A Yes.

8 Q Okay. And that -- we'll have that  
9 marked as 5211, okay?

10 And again, can you turn to  
11 Section 12 on Page 4 of the document?

12 A Okay. I see that.

13 Q This is the "Custody of Securities"  
14 section again.

15 Right?

16 A Yes.

17 Q And it -- like the last one we  
18 looked at, Section 12 on Page 4 of  
19 Exhibit 5211 says, at the end after the  
20 semicolon, "and provided further, however,  
21 that the partnership shall have no claim of  
22 nominee arrangement with respect to any  
23 property of a partner unless such property is  
24 so set forth on Schedule A."

25 Correct?

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1 A Correct.

2 Q So this has the same language as  
3 the Delvian agreement we just looked at.

4 Right?

5 A Correct.

6 Q And let's look at the last page of  
7 this document.

8 A Okay.

9 Q You have that in front of you?

10 A I do.

11 Q And this shows that the Roadcraft  
12 Technologies account at Wells Fargo Bank was  
13 designated as property held as nominee.

14 Right?

15 A Correct.

16 Q This does not list any account at  
17 one of the Solo custodians, does it?

18 A It does not.

19 Q Okay. Mr. Dubinsky, you say you  
20 reviewed records related to 2,559 trades  
21 conducted through Solo custodians.

22 Right?

23 A Correct.

24 Q And I can -- okay. I was going to  
25 offer to point you to your report.

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1                   But you recall that, I take it?

2                   A    Yes.

3                   Q    Okay. Those trades involved shares  
4    in Danish companies.

5                   Right?

6                   A    They were -- I classified those as  
7    purported transactions and purported shares  
8    of Danish companies. That would be the way  
9    that I would classify them.

10                  Q    Okay. In your report, you reviewed  
11   such trades in shares of Carlsberg.

12                  Right?

13                  A    Correct.

14                  Q    And also such trades in Novo  
15   Nordisk.

16                  Correct?

17                  A    Yes.

18                  Q    And also you reviewed such trades  
19   in AP Moeller-Maersk.

20                  Right?

21                  A    Correct.

22                  Q    Okay. And those are real  
23   companies.

24                  Right?

25                  A    That is correct, yes.

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1 Q Carlsberg is a beer company.

2 Right?

3 A Correct.

4 Q Novo Nordisk is a pharmaceutical  
5 company.

6 Correct?

7 A That's correct.

8 Q And AP Moeller-Maersk is a shipping  
9 company.

10 Right?

11 A That's correct.

12 Q Most shares in Denmark are  
13 dematerialized.

14 Correct?

15 A That's my understanding, yes.

16 Q And that means that no one is  
17 holding paper stock certificates.

18 Right?

19 A That's correct.

20 Q Dematerialized share holdings are  
21 reflected in electronic book entries.

22 Correct?

23 MR. WEINSTEIN: Objection to form.

24 A At a custodial -- or at the issuer,  
25 they would be maintained electronically, and

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1 at a custodian that actually holds custody of  
2 them, yes.

3 Q Let's go to your opening report,  
4 which is Exhibit 5200 at Page 39.

5 A Do you have that in front of you?

6 Q I do.

7 A Okay. And I'm going to point you  
8 to Paragraph Roman Numeral 6, Opinion  
9 Number 1.

10 A Do you see that?

11 A I do.

12 Q And this is the one in all caps and  
13 bolded.

14 "There is no evidence that the  
15 plans ever owned actual shares of Danish  
16 securities from their Solo trades or received  
17 actual dividends issued by the Danish  
18 companies whose stock was purportedly used in  
19 the Solo trades."

20 A Do you see that?

21 A Yes.

22 Q Ownership is a legal concept, isn't  
23 it?

24 A I think it certainly -- well, it's  
25 an accounting and legal concept. But from

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1 the standpoint of in the ultimate  
2 determination who had legal title, yes, that  
3 would be a legal determination.

4 Q And that's not a determination that  
5 you're qualified to make.

6 Right?

7 A Again, I'm not a lawyer. I was  
8 doing a forensic accounting investigation to  
9 determine whether there was evidence that  
10 these shares actually existed, and that's  
11 what I was discussing.

12 Q Okay. But this doesn't -- this  
13 opinion doesn't talk about whether the shares  
14 actually existed.

15 It talks about ownership, doesn't  
16 it?

17 MR. WEINSTEIN: Objection to form.

18 A Well, the heading says what it  
19 says. But as you go through the report, the  
20 basis for the opinion is that I saw no  
21 evidence to support that the shares actually  
22 existed.

23 And therefore, if the shares didn't  
24 exist, certainly from a forensic accounting  
25 standpoint, the plans couldn't have owned

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1 them.

2 Q You say if the shares didn't exist,  
3 the plan -- the plans couldn't have owned  
4 them.

5 Is -- again, I ask you: Is that a  
6 legal opinion?

7 A No, I think that's a forensic  
8 accounting opinion, I think the genesis  
9 being, after doing a forensic investigation  
10 and looking for evidence of the actual shares  
11 existing at either -- ultimately at a  
12 custodian that Solo used as a sub-custodian,  
13 and the fact that those shares didn't exist,  
14 I concluded that therefore, the plans could  
15 not have owned them. And I think that's a  
16 forensic accounting conclusion.

17 Ultimately, the judge or jury --  
18 well, the judge would have to make a  
19 determination from a legal standpoint if  
20 there's something different than that, if  
21 there was legal ownership or not.

22 I'm not issuing a legal opinion.

23 Q So the forensic -- so a forensic  
24 accountant is qualified to determine  
25 ownership?

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1 Is that your testimony?

2 MR. WEINSTEIN: Objection to form.

3 A I think certainly from the  
4 standpoint of looking at the substance of a  
5 transaction and trying to determine if the  
6 substance was, were there shares, did the  
7 plans actually own those, yes, I think I'm  
8 qualified and it is within the purview of a  
9 forensic accounting investigation.

10 I think the judge will make a  
11 determination -- if there's a different legal  
12 meaning, then that would be up to the judge  
13 to make.

14 Q So is that ownership under U.S.  
15 principles of ownership?

16 MR. WEINSTEIN: Objection to form.

17 A Again, I'm not issuing a legal  
18 opinion or not, or I'm not issuing a legal  
19 opinion.

20 What I'm saying is I'm looking from  
21 an accounting perspective, what do I see. Do  
22 the plans -- and they're U.S. based pension  
23 plans -- did they own the shares, did the  
24 shares exist.

25 And I concluded the shares did

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1 not -- there was no evidence that the shares  
2 existed. And therefore, the dividends  
3 weren't -- couldn't have existed, weren't  
4 paid, and that was my conclusion.

5 Q I'm asking you regarding your  
6 statement regarding ownership, sir. And I'm  
7 asking you whether it was under U.S.  
8 principles of ownership.

9 What is your answer to that  
10 question?

11 A Again, I think you're asking for a  
12 legal conclusion and I'm not here to give you  
13 a legal opinion on -- I'm here to tell you  
14 what I did and under what basis that I  
15 opined.

16 Q So the concept of ownership in your  
17 Opinion Number 1, you're not willing to tell  
18 me under what principle you're giving that  
19 opinion, whether it's U.S., EU, Danish, or  
20 whatever?

21 MR. WEINSTEIN: Objection to form,  
22 asked and answered.

23 A Again, I'm not here to issue a  
24 legal opinion. I think that would call for a  
25 legal opinion.

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1 Q You would agree, wouldn't you, the  
2 customer can have a long position in a stock  
3 without shares being held in their  
4 custodian's account.

5 Right?

6 MR. WEINSTEIN: Objection to form.

7 A Can you repeat the question again?

8 Q Sure. You would agree that a  
9 customer can have a long position in a stock  
10 without shares being held in their  
11 custodian's account.

12 Right?

13 MR. WEINSTEIN: Objection to form.

14 A If -- I guess one example could be  
15 if they actually had the paper certificates,  
16 then they could be -- they'd be long and they  
17 don't have to have them in a custodial  
18 account.

19 That would be an example.

20 Q I'm asking in the context of  
21 dematerialized shares, sir, so let's put  
22 aside paper stock certificates, which I think  
23 most of the world has for a long time now.

24 A customer can have a long position  
25 in stock without there being any record of

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1 the shares being held in the accounts of a  
2 central securities depository.

3 Right?

4 MR. WEINSTEIN: Objection to form.

5 A Again, I'm not sure I understand  
6 the question.

7 Q What don't you understand?

8 A The question that you just asked  
9 me. You said --

10 Q Do you understand anything about  
11 it?

12 A Well, you asked, "Could somebody  
13 have a long position in stock and the central  
14 securities depository doesn't have record of  
15 that?"

16 Is that what you're asking?

17 Q That's the question I just asked,  
18 yes.

19 MR. WEINSTEIN: Objection to form.

20 A I don't know. I mean, maybe you're  
21 asking -- are you asking -- it sounds like  
22 you're asking a legal, you know, opinion. I  
23 don't have a legal opinion on that and I'm  
24 struggling to figure out how that could be.

25 Q Are you familiar with situations

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1 where one can own shares without a custodian  
2 or sub-custodian having any shares?

3 MR. WEINSTEIN: Objection to form.

4 A Again, not that I'm aware of in  
5 your -- maybe you can add some facts to the  
6 hypothetical to make it clearer for me.

7 But in general, I don't know how  
8 that could be.

9 Q You can't think of any circumstance  
10 under which that could happen as you sit here  
11 today without me providing you with a  
12 hypothetical.

13 Is that your testimony?

14 MR. WEINSTEIN: Objection to form.

15 A Again, nothing's coming top of  
16 mind.

17 Q Let me ask you about another word  
18 you used in this opinion.

19 You say, "The plans never owned  
20 actual shares."

21 Do you see that?

22 A Yes.

23 Q Okay. Is "actual shares" a  
24 technical term?

25 A No.

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1 Q Is it a legal term?

2 A No. It's a term that I penned  
3 there just to indicate the existence of the  
4 actual Danish securities. That's what I was  
5 referencing.

6 So it's not a technical term.

7 Q Okay. Most shares in Denmark exist  
8 in electronic book entry form.

9 Right?

10 A Correct.

11 Q Book entries would show long or  
12 short positions.

13 Is that right?

14 A Book entries at a broker?

15 Is that what you're asking?

16 Q Sure.

17 A There could be records of the  
18 broker showing long and short positions,  
19 correct.

20 Q Let's go to Heading A on Page 40 of  
21 your report. This is Exhibit 5200 still.

22 A Yes.

23 Q There you say, "The sub-custodians  
24 identified by Solo Capital confirmed that  
25 they did not hold any shares of Danish

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1 securities on behalf of the Solo custodians  
2 during the relevant period."

3 A Yes.

4 Q Do you see that?

5 A Yes.

6 Q You don't say anything here about  
7 whether anyone owned any shares.

8 Right?

9 A In that statement, I don't say  
10 anything about that specifically.

11 Q Do you say anything about it  
12 generally?

13 A No. You were just reading  
14 sub-point A, and it says what it says. "The  
15 sub-custodians identified by Solo Capital  
16 confirmed that they did not hold any shares  
17 of Danish securities on behalf of the Solo  
18 custodians during the relevant period."

19 Q Okay. With some interruption,  
20 we've been going for about an hour and a  
21 half.

22 Why don't we take a break?

23 A Okay.

24 THE VIDEOGRAPHER: Stand by. The  
25 time is 10:28 a.m. and we're going off

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1 the record.

2 (Brief recess taken.)

3 THE VIDEOGRAPHER: Stand by. The  
4 time is 10:45 a.m. and we're back on  
5 record.

6 Q Okay. Can you hear me all right,  
7 Mr. Dubinsky?

8 A Yes. Much better, thank you.

9 Q Okay. Let me try to set out a  
10 simple hypothetical for you, okay?

11 Let's say I call my stock broker  
12 today and I asked to buy a hundred shares of  
13 Apple. If I purchase those shares today and  
14 Apple stock goes down ten dollars per share  
15 tomorrow, I will suffer a loss in value of  
16 those shares.

17 Right?

18 A Assuming the trade is settled and  
19 cleared, yes.

20 Q Well, the trade isn't going to  
21 settle and clear today, is it?

22 A No, but inherent in the trading  
23 process there has to be settlement in  
24 clearance. So when you say you made a trade,  
25 inherent in that is, at some point, whether

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1 it's a T plus 2 or 3 trading cycle, whatever  
2 the trading cycle is, depending on what  
3 jurisdiction, once the settlement occurs and  
4 you have ownership of that stock, yeah, if  
5 you turned around and sold it at that point,  
6 you'd have an economic loss or gain.

7 Q But I'm buying the shares today.  
8 The stock's going down ten dollars and that's  
9 all happening before the trade settles.

10 Right?

11 A Yes. The price movement would  
12 occur before the trade settles, yes.

13 Q And you would agree with me that I  
14 suffer the loss, the ten-dollar loss.

15 Right?

16 A Well, again, there's a -- there's  
17 an unrealized loss at that point, but the  
18 stock has to settle. You can't just have a  
19 trade that hangs in thin air without  
20 settlement. You have to get the stock at  
21 some point.

22 And then, depending on what the  
23 economics are at that point, you'd conclude  
24 the trade.

25 Q So if I don't pay for the shares,

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1 and the trade never settles, who is  
2 responsible for that ten-dollar loss?

3 MR. WEINSTEIN: Objection, calls  
4 for a legal conclusion.

5 A Yeah, I think you're asking for me  
6 to issue a legal conclusion on who would be  
7 liable for a trade. You know, there's a lot  
8 of facts that could go into that, so it's  
9 hard to answer.

10 Q Okay. So you can't answer that  
11 question.

12 A Right?

13 A I think you'd need to take the  
14 hypothetical and give me some more facts.

15 Q What other facts do you need?

16 A Does the stock exist? Was there  
17 stock that was going to settle? Was it just  
18 a broken trade that is -- the trade is never  
19 fixed?

20 I mean, there are a lot of  
21 different hypotheticals.

22 Q Okay. So let's say I call today,  
23 on Tuesday, to buy the shares of Apple and  
24 the trade is going to settle on Thursday.

25 But let's say I decide later today

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1 to sell those same shares. I can sell those  
2 shares even though the trade hasn't settled  
3 yet.

4 Right?

5 MR. WEINSTEIN: Objection.

6 A Again, my understanding is you  
7 could place a trade to sell them, but you  
8 have to go through the first settlement  
9 before you can settle on the sale. So you'd  
10 need to have the settlement on the buy side,  
11 and then go to settlement on the sell side.

12 You can't just do it in thin air.

13 Q Oh, so you're saying that I can't  
14 buy and sell Apple on the same day?

15 MR. WEINSTEIN: Objection,  
16 misstates his testimony.

17 A That's not what I said.

18 Q It was a question.

19 MR. WEINSTEIN: The question was --

20 Q Can you buy and sell Apple on the  
21 same day?

22 A You could place a trade for a buy  
23 order and a sell order on the same day, yes.

24 Q And when you buy the shares, are  
25 you the owner of the shares?

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1                   MR. WEINSTEIN: Objection, calls  
2                   for a legal conclusion, vague. Again,  
3                   you know, I think you're --

4                   MR. BONGIORNO: I think you could  
5                   just object without giving a speech,  
6                   please.

7                   MR. WEINSTEIN: Did you hear the  
8                   objections of your side the other day?  
9                   Lengthy speeches and bases. But when  
10                  you call for a legal conclusion, I'm  
11                  going to make that objection.

12                  A Again, I think you're asking me for  
13                  a legal conclusion on who owned -- who owns  
14                  the shares. But assuming a trade is placed  
15                  and settlement is to occur and the stock is  
16                  actually delivered -- cleared, delivered, and  
17                  settled, then you would own the stock, the  
18                  stock is there. You own it.

19                  Q But if you buy and sell on the same  
20                  day, it doesn't -- the buy doesn't clear,  
21                  does it?

22                  MR. WEINSTEIN: Objection, form.

23                  A Again, the buy -- you can place the  
24                  orders on the same day, but there has to be a  
25                  settlement and clearance process for the two

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1 legs of that trade.

2 Q But they can net settle, can't  
3 they?

4 MR. WEINSTEIN: Objection to form.

5 A In what scenario?

6 Q In the scenario I just gave where I  
7 buy a hundred shares of Apple today, and then  
8 I sell later today?

9 MR. WEINSTEIN: Objection to form.

10 A If the -- if you're trading  
11 through -- my understanding is if you're  
12 trading through the same sub-custodian and  
13 both the buyer and seller or custodian or  
14 sub-custodian and both the buyer and seller  
15 have accounts there when the settlement  
16 occurs, there could be a net settlement  
17 because the stock is already at the  
18 custodian. The stock exists.

19 So in that hypothetical, I would  
20 agree that type of net settlement could  
21 occur.

22 Q So your testimony is, if I buy and  
23 later sell a hundred shares of Apple on the  
24 same day through my broker, they can't net  
25 settle unless the broker is long those

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1 shares?

2 Is that your testimony?

3 MR. WEINSTEIN: Objection to form.

4 A No. I'm saying that the  
5 shares -- either the broker has a market in  
6 those shares and has an inventory. But you  
7 posed if you bought and sold, and the -- and  
8 the broker is acting as an agent for that  
9 sale, not a principal, then, in that  
10 hypothetical, I believe they can net settle  
11 if both the buyer and seller were at the same  
12 institution and the shares were already  
13 either at the custodian at the institution or  
14 the sub-custodian.

15 That's my understanding.

16 Q So your view is if the shares are  
17 not already at the custodian or  
18 sub-custodian, and I buy and sell on the same  
19 day, that the custodian has to go out and  
20 find those shares even though I bought and  
21 sold them the same day?

22 A My -- it's -- again, I'm not -- I  
23 think there's other people dealing with  
24 trading, trading experts in this case.  
25 That's not, you know, my area or my opinion.

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1                   But my general understanding is,  
2 yes, to net settle, you would have to have  
3 the shares at the same custodian or the  
4 shares were being borrowed and brought into  
5 that custodian and already sourced.

6                   But that's my general  
7 understanding. I'm not an expert on net  
8 settlement.

9                   Q    Okay. Let's look at Tab 5225 of  
10 your binder.

11                   MR. BONGIORNO: We'll mark this as  
12 Exhibit 5225.

13                   (Whereupon the above mentioned was  
14 marked for Identification.)

15                   Q    It's a document entitled "SEC  
16 Investor Publications, Day Trading: Your  
17 Dollars at Risk."

18                   Do you have that?

19                   A    It doesn't say "SEC." Mine just  
20 says "Investor Publications, Day Trading:  
21 Your Dollars at Risk."

22                   Q    Okay. We're looking at the same  
23 document, and we're at tab -- Exhibit 5225.

24                   At the top of the page, I want to  
25 read to you the first sentence.

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1                   "Day traders rapidly buy and sell  
2 stocks throughout the day in the hope that  
3 their stocks will continue climbing or  
4 falling in value for the seconds to minutes  
5 they own the stock, allowing them to lock in  
6 quick profits."

7                   Did I read that correctly?

8                   A    Yes.

9                   Q    And does this document suggest to  
10 you that traders can both buy and sell the  
11 same stock on the same trading day?

12                  A    Yes, that's what it says.

13                  Q    And it says the traders can do this  
14 rapidly throughout the day.

15                  Correct?

16                  A    Correct.

17                  Q    And if the traders buy and sell  
18 rapidly, they nonetheless own a stock on the  
19 trade, even if for seconds to minutes.

20                  Right?

21                  MR. WEINSTEIN: Objection to form.

22                  A    Well, again, I haven't read this  
23 whole document and I don't -- I mean, it  
24 says -- it says what it says.

25                  I don't know what they mean by "own

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1 the stock" in regards to this. I haven't  
2 read this whole document.

3 I assume --

4 Q But it doesn't say?

5 A Well, I assume they mean the trades  
6 settle. I assume they mean they're going to  
7 settle. You can't have a trade that doesn't  
8 settle.

9 But it doesn't -- let me just see  
10 if it says anything else about that here.

11 (Witness reviewing.)

12 Q Okay.

13 A (Witness reviewing.)

14 Yeah, it doesn't get into much  
15 detail.

16 Q It doesn't say anything about  
17 settlement.

18 Right?

19 A No. It's a two-page document from  
20 2005. It doesn't really get into the  
21 mechanics of the trade.

22 Q The document doesn't say that a day  
23 trader must confirm that its broker or  
24 custodian holds the shares that the investor  
25 is purchasing.

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1 Right?

2 A It doesn't -- well, let me -- let's  
3 just see.

4 (Witness reviewing.)

5 No, it's just -- it's just saying  
6 that day trading firms must register with the  
7 SEC in the states. No, it doesn't -- it  
8 doesn't say specifically anything about  
9 confirming with the broker.

10 Q But it does use the word "own."

11 Right?

12 A Yes.

13 Q The same word you used in one of  
14 your opinions that we looked at earlier?

15 A Yes.

16 Q And you'd agree with me that short  
17 selling is very common.

18 Right?

19 A I would agree that short selling  
20 happens in the market.

21 Q You wouldn't agree with me that  
22 it's common, though?

23 A Well, in relative to what, short  
24 sell? I will agree that short selling occurs  
25 and it happens.

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1                   But again, relative to what? You  
2 know, on a given day, a month, it happens.  
3 Short selling occurs.

4                   Q     And that's when an investor sells  
5 shares that it does not have with an intent  
6 to buy the shares at a later date.

7                   Right?

8                   A     Well, I'm not sure I agree with  
9 that definition, specifically.

10                  It's -- are you talking about a  
11 naked short where the shares haven't been  
12 sourced yet?

13                  Q     What's your definition of a "short  
14 sale?"

15                  A     Well, you asked me the question.  
16 I'm just trying to get you to clarify the  
17 question so I can answer it.

18                  Q     Okay. Now I'm asking you another  
19 question.

20                  What is your definition of a "short  
21 sale?"

22                  A     A "short sale" is usually a sale  
23 where the shares have been sourced, you don't  
24 have the shares yet, and then you're going to  
25 cover -- when the delivery and settlement has

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1 to occur, you're going to cover your short.

2 Q So when someone sells short, they  
3 don't necessarily have a long position, and  
4 so they don't have any shares at the time of  
5 the short sale.

6 Right?

7 A They wouldn't have a -- they may  
8 have a long position, and may choose to go  
9 short against the box. But they're -- if  
10 they don't have a long position, then that  
11 short position can't be a naked short as far  
12 as I understand it.

13 It has to be -- the shares have  
14 to -- you have to have a source to get the  
15 shares through a loan or some other  
16 arrangement to have those shares at some  
17 point.

18 Q Okay. So you would agree with me  
19 that the result of a short sale is that the  
20 market can have investors that have economic  
21 exposure to a higher number of shares than  
22 the amount issued by the issuer.

23 Right?

24 MR. WEINSTEIN: Objection to form.

25 A I guess that's possible. I don't

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1 think that's very common.

2 Q Well, the number of total  
3 outstanding long positions can reach over a  
4 hundred percent of the total outstanding  
5 shares issued by the company, right, as a  
6 result of short sales?

7 MR. WEINSTEIN: Objection to form.

8 A In long positions, trades that have  
9 not settled yet? Is that what you mean?

10 There can only be -- I mean, once  
11 the trade settles, there can only be the  
12 stock the issuer has. It can't be -- you  
13 can't trade more stock than the issuer has  
14 actually issued.

15 Q Well, someone can be long in a  
16 stock as a result of purchasing from a short  
17 seller.

18 Right?

19 A If it hasn't gone to settlement?  
20 Is that what you're saying?

21 Again, once it goes to settlement,  
22 the shares are there. So the shares in the  
23 system -- if I'm Exxon, and I've got  
24 10 million authorized and issued shares,  
25 that's how many shares are authorized and

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1 issued.

2 And that's what -- ultimately, at  
3 the end of the day, that's what's traded.

4 Q Right. But a short seller can  
5 borrow shares to sell, right?

6 Isn't that what happens?

7 A Yeah, but they have to borrow real  
8 shares. They can't borrow shares out of thin  
9 air.

10 So somebody has to own those shares  
11 and be long in the shares. And those are  
12 shares of the original issuer that are issued  
13 in outstanding shares.

14 Q Right. But the short seller is  
15 borrowing them from someone who's long, and  
16 selling them to someone else who's then long  
17 as well.

18 Right?

19 MR. WEINSTEIN: Objection to form.

20 A That's during the -- you're -- so  
21 you're -- I think what you're asking is  
22 presettlement? If somebody just places an  
23 order and a trade before it settles, if I  
24 understand you correctly? Is that what  
25 you're asking me?

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1                   Because once it settles, there's a  
2 settlement.

3                   Q     Eventually, sure. I'm asking you  
4 about the moment when somebody purchases from  
5 a short seller who has borrowed from someone  
6 else who is long.

7                   Both the lender of those shares and  
8 the buyer of those shares that were sold  
9 short, they're both long at that point in  
10 time, are they not?

11                  MR. WEINSTEIN: Objection to form.

12                  A     Well, I think in theory they're  
13 long. But settlement has to occur. So in  
14 your -- I think the hypothetical is an  
15 incomplete hypothetical.

16                  You have to say, at the point it  
17 settles, not everybody is going to be long.  
18 The shares actually transferred at that  
19 point.

20                  Q     So you don't know whether or not  
21 it's possible for short interests to cause  
22 there to be long positions that are over a  
23 hundred percent of the outstanding shares?

24                  MR. WEINSTEIN: Objection, asked  
25 and answered.

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1 A Yeah, I think there could be. I  
2 don't think it's very common.

3 And again, I think it would be at  
4 that moment before settlement occurs when the  
5 trades are placed.

6 Q Well, it's not a moment, is it,  
7 sir, for settlement to occur? It's not a  
8 moment, it's days, isn't it?

9 A No. I said the moment the trades  
10 are placed, but until settlement occurs.  
11 Yes, there's several days in that -- in that  
12 time frame, yes.

13 Q You said it would be at that moment  
14 before settlement occurs.

15 And my question to you is: It's  
16 not just a moment before settlement occurs,  
17 it's days before settlement occurs.

18 Right?

19 MR. WEINSTEIN: Objection to form.

20 A Again, assuming the shares exist  
21 and settlement will happen, yes, it's T plus,  
22 depending on the jurisdiction, whatever the  
23 settlement is.

24 Q Okay. Let's go to -- let's go to  
25 Dr. Carr's report. Actually, we won't go to

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1 his report.

2 We'll go to something his report  
3 cites, which is in Tab 5227 of your binder.

4 MR. BONGIORNO: We can mark that as  
5 Exhibit 5227.

6 (Whereupon the above mentioned was  
7 marked for Identification.)

8 Q Do you have in front of you a  
9 document that -- with the SEC seal on the  
10 front dated October 14th of last year?

11 A Yes.

12 Q Okay. Have you seen this document  
13 before?

14 A No, I have not.

15 Q Sorry? I didn't hear you.

16 A I'm sorry. No, I have not.

17 Q Well, I can represent to you this  
18 was cited in Dr. Carr's report. If you look  
19 at the Table of Contents, you can see that it  
20 discusses "GameStop."

21 A Yes, I see that.

22 Q Okay. If you go to Page 21 of the  
23 report, you see where it says, "Some  
24 institutional accounts had significant short  
25 interests in GME" -- which is

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1 GameStop -- "prior to January 2021."

2 Are you with me?

3 A Right underneath the charts? Is  
4 that where you're reading?

5 Q Exactly.

6 A Yeah, I see that.

7 Q Okay. And do you see the next  
8 sentence, which starts, "GME, GameStop, short  
9 interest, as a percentage of float in January  
10 of 2021, reached 122.97 percent."

11 Do you see that?

12 A Yes.

13 Q Do you understand that to mean that  
14 the percentage of short -- that the amount of  
15 short interests in GameStop was more than the  
16 entire float of GameStop?

17 MR. WEINSTEIN: Objection to form.

18 He said he's never seen this document  
19 before.

20 A Again, I haven't seen the document,  
21 I haven't read through it. I mean, it says  
22 what it says, so I don't know how they're  
23 defining things and what the background is to  
24 this.

25 Q Okay. So you can't -- you can't

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1 agree with me that this sentence says that  
2 the interests -- "the short interests in  
3 GameStop, as a percentage of float, reached  
4 122.97 percent?"

5 You're not willing to agree to  
6 that?

7 MR. WEINSTEIN: Objection. He did  
8 agree to your first question. Your next  
9 question was a different one.

10 A You asked me, did you -- I think  
11 you --

12 MR. BONGIORNO: Do you want to  
13 answer it for him, Marc, or do you want  
14 him to answer it?

15 MR. WEINSTEIN: He actually did  
16 answer it once, if you want to go back  
17 on your realtime. And then you asked a  
18 different question.

19 MR. BONGIORNO: I thought you said  
20 it was a different question.

21 MR. WEINSTEIN: Why don't you just  
22 ask a question now?

23 MR. BONGIORNO: I did.

24 MR. WEINSTEIN: And what's the  
25 question on the table?

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1 Q You can't agree with me that the  
2 sentence says that "the interest -- short  
3 interest in GameStop, as a percentage of  
4 float, reached 122.97 percent?"

5 You're not willing to agree to  
6 that?

7 MR. WEINSTEIN: Objection to form.

8 A I agree that you read it correctly.

9 Q And you don't understand what that  
10 sentence means?

11 A Again, I haven't read through the  
12 report you're putting in front of me. This  
13 is the first time I've seen it.

14 It's 20 -- let's see how many  
15 pages -- no, it's 44 pages. So no, I'm not  
16 going to agree to anything in this until I  
17 have time to read the entire report and  
18 digest it and see if I understand it.

19 So you can read whatever you would  
20 like from it, I can tell you that you read it  
21 correctly if that's what you want.

22 But that's as far as I can go.

23 Q Okay. You would agree with me,  
24 sir, that an investor can have -- can obtain  
25 economic exposure to an underlying stock from

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1 means other than purchasing the stock.

2 Right?

3 MR. WEINSTEIN: Objection to form.

4 A I'm not sure what you mean, if  
5 you --

6 Q Well, an investor can obtain  
7 economic exposure to a stock through a  
8 derivative.

9 Right?

10 A I'm sorry. I didn't hear the end  
11 of that.

12 Through what?

13 Q Sorry. I'll do it again. Sorry  
14 about that.

15 An investor can obtain economic  
16 exposure to a stock through a derivative.

17 Right?

18 A I think in the general  
19 hypothetical, it could be -- it's possible,  
20 yes.

21 Q And an investor can obtain economic  
22 exposure to a stock through an option.

23 Right?

24 A In general, that's correct.

25 Q And an investor can obtain economic

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1 exposure to a stock through a futures  
2 contract.

3 Right?

4 A In general, that's correct.

5 Q And an investor can obtain economic  
6 exposure to a stock through a forward  
7 contract.

8 Right?

9 A In general, that's correct.

10 Q And an investor can obtain economic  
11 exposure to a stock through a notional  
12 principal contract.

13 Right?

14 MR. WEINSTEIN: Objection to form.

15 A Again, depending on the terms of  
16 that contract, it's possible, yes.

17 Q And you're aware that the pension  
18 plans entered into flex futures contracts.

19 Right?

20 MR. WEINSTEIN: Objection to form.

21 A There was trades that Solo made  
22 that I saw on behalf of the pension plans,  
23 some of them, at certain times, for flex  
24 futures.

25 Q And you further agree that those

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1 contracts were actually executed on an  
2 exchange and were real.

3 Right?

4 MR. WEINSTEIN: Objection to form.

5 A Again, I think that there was  
6 evidence that those futures were executed. I  
7 think the ones we're referring to were at  
8 J.P. Morgan in the earlier period -- you  
9 know, earlier periods.

10 But yes, my understanding, those  
11 were exchange traded futures.

12 Q And they were real.

13 Right?

14 A There were -- as I recall, there  
15 were offsetting legs that Solo was placing.  
16 But yes, those actually were real  
17 transactions, the actual flex future that I  
18 saw.

19 Q Okay. Let's go to Tab 5217 in your  
20 binder.

21 MR. BONGIORNO: Which we'll mark as  
22 Exhibit 5217.

23 (Whereupon the above mentioned was  
24 marked for Identification.)

25 A 5317 or 5217?

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1 Q I meant 5217.

2 A I think you said "53," but I've got  
3 5217.

4 Q All right. It's already 11:00. If  
5 that's the first one I got wrong, I'm doing  
6 great, trust me.

7 Do you have that in front of you,  
8 sir?

9 A I do, yes.

10 Q Okay. Is it an e-mail from  
11 Execution@FGC Securities to Adam@Bernina P?  
12 Is that what it is?

13 A Yes.

14 Q If you look further down the page  
15 on the cover e-mail, this relates to a  
16 transaction done by the Bernina Pension Plan  
17 in shares of Carlsberg stock?

18 MR. WEINSTEIN: Objection to form.

19 A The purported purchase, yes.

20 Q Right. No, I understand that's  
21 your position, and you know, if you -- you  
22 don't need to say "purported," but feel free.

23 But I think we understand each  
24 other in that regard.

25 A Okay.

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1 Q I want you to turn to the page to  
2 the attachment behind the blue sheet. Okay?  
3 This is -- we're still in Exhibit 5217.

4 I want you to look at Bates  
5 number 75373.

6 A Okay. I see that.

7 Q It's a document entitled "Equity  
8 Futures Confirmation."

9 Correct?

10 A Yes.

11 Q And it shows the terms and  
12 conditions of an equity futures transaction.

13 Correct?

14 A Yes.

15 Q It's a single stock future in  
16 "CARLB" which I believe is Carlsberg.

17 Correct?

18 A Yes.

19 Q You see where it says "BClear flex  
20 F-U-T-S?"

21 A Yes.

22 Q This is an example of one of the  
23 futures that you stated in your report were  
24 actually executed on an exchange and were  
25 real.

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1 Right?

2 A That is correct, yes.

3 Q Okay. Let's turn to the following  
4 page ending in Bates number 75374. Again,  
5 we're still in Exhibit 5217.

6 Do you have that in front of you?

7 A Yes.

8 Q This is a "Cash Equity  
9 Confirmation."

10 Right?

11 A Yes.

12 Q And this is attached to the same  
13 e-mail.

14 Right?

15 A It's consecutive Bates numbers. I  
16 guess that's how it was produced.

17 So I'm assuming it was attached to  
18 the e-mail.

19 Q Okay. It's also a confirmation  
20 from FGC.

21 Right?

22 A Yes.

23 Q And this one is for a cash equity  
24 transaction.

25 Right?

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1 A Correct.

2 Q And in your report, you say that  
3 the plans never actually purchased these  
4 shares because you say you did not locate any  
5 evidence of share holdings.

6 Right?

7 A Correct.

8 Q Looking at these confirmations from  
9 FGC, the first one I showed you, you say that  
10 shows a real transaction.

11 Right?

12 A Correct.

13 Q And the second one, according to  
14 you, shows a fake transaction.

15 Right?

16 A Correct. Fictitious or fake, yes.

17 Q Okay. Both are issued by FGC.

18 Right?

19 A Correct.

20 Q Both are titled "Confirmation."

21 Right?

22 A Both have the word "confirmation"  
23 in them, correct.

24 Q If I'm an investor who received  
25 this e-mail with these confirmations, is

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1 there any way to know by looking at these  
2 documents that the first page I showed you is  
3 about a real transaction, and the second page  
4 is about what you claim is a fictitious  
5 trade?

6 MR. WEINSTEIN: Objection to form.

7 A Again, I don't know what -- you  
8 said, "Would the purchaser that received  
9 these know?"

10 Is that -- was that the preface to  
11 your question?

12 Q "The investor," yes.

13 A So again, I don't know what the  
14 investor would be thinking or not. I'm not  
15 testifying -- I'm not here to testify about  
16 what someone knew or didn't know in that  
17 regard.

18 Q Let's go back to the first page  
19 that shows the futures confirmation.

20 Okay?

21 A Okay.

22 Q This shows a futures price of DKK,  
23 Danish kroner, 583.4300.

24 Right?

25 A Correct.

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1 Q And this future was cleared through  
2 J. P. Morgan.

3 Correct?

4 A It doesn't say on here, but my  
5 recollection is they were cleared through  
6 J. P. Morgan. There were actual J. P. Morgan  
7 documents that showed that they cleared.

8 Q And the name of the exchange is  
9 something called Euronext.

10 Correct?

11 A Correct.

12 Q Are you aware of whether Solo  
13 Capital was able to clear this trade?

14 A Whether Solo Capital, through  
15 J. P. Morgan acting as their sub-custodian?

16 Is that what you're asking?

17 Q Yes.

18 A Yes, it was my understanding that  
19 trade -- those trades cleared.

20 Q And --

21 A To be clear on the record, the flex  
22 futures.

23 Q Right. You're referring to this  
24 page we've been looking at for the past  
25 minute or two that says "Equity Futures

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1 Confirmation" at the top.

2 Right?

3 A Correct. Bates stamp ending in  
4 373.

5 Q And Solo Capital was not a member  
6 of BClear.

7 Right?

8 A That was my understanding, correct.

9 Q Do you know if J.P. Morgan was a  
10 member of BClear?

11 A Sitting here today, I don't know  
12 specifically one way or the other.

13 Q You didn't look into that in  
14 connection with your work here?

15 A I don't recall looking into it. I  
16 recall seeing the statement from J.P. Morgan  
17 where these trades actually occurred as  
18 sub-custodian.

19 Q It wasn't important for you to  
20 understand why Solo used J.P. Morgan for  
21 these services?

22 A No, not necessarily, no. My  
23 understanding is they were using J.P. Morgan  
24 because Solo couldn't clear certain  
25 transactions.

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1                   That was my general understanding.

2                   But I didn't investigate that further.

3                   Q     And they couldn't do so because  
4     they didn't have a BClear membership?

5                   Is that your understanding?

6                   A     I don't know whether it was because  
7     of that or whether they just weren't  
8     registered properly or had the authority to  
9     do so. But they needed -- my understanding  
10    was they needed a sub-custodian to -- like  
11    J.P. Morgan to handle this for them.

12                  Q     Okay. Let's keep that tab handy  
13    and we'll go over to -- but we'll go over to  
14    5218.

15                  MR. BONGIORNO: Let's mark as the  
16    next exhibit what is at Tab 5218.

17                  (Whereupon the above mentioned was  
18    marked for Identification.)

19                  Q     This is an e-mail from FGC to the  
20    Bernina plan dated August 21st of 2013.

21                  Do you have that in front of you?

22                  A     Yes.

23                  Q     Okay. Do you recall whether or not  
24    you've seen this one before?

25                  A     It's possible. I don't recall

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1 specifically this document, but it looks  
2 familiar.

3 Q Okay. Flip behind the blue sheet.  
4 There's an attachment of an "Equity Futures  
5 Confirmation."

6 Do you see that?

7 A Yes, I see that.

8 Q It's for the purchase of 6,000  
9 futures contracts in Carlsberg.

10 Do you see that?

11 A I do see that, yes.

12 Q And the price of the futures  
13 contract listed here is Danish kroner,  
14 561.4700.

15 Right?

16 A Correct.

17 Q And if you turn back to the futures  
18 confirm at 5217, that was confirmation for  
19 the sale of 6,000 futures contracts in  
20 Carlsberg.

21 Right?

22 A Yes. The one on Bates ending 75373  
23 was for a sell, and this was for a buy,  
24 Bates 8403.

25 Q Right. And the sell was for Danish

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1 kroner, 583.4300.

2 Right?

3 A Yes.

4 Q So if we take the price of the  
5 futures purchase at Exhibit 5218 and the  
6 price of the futures sale at Exhibit 5217,  
7 that's the difference between 561.4700 and  
8 583.4300.

9 Right?

10 A Correct.

11 Q So Bernina would have made a profit  
12 of Danish kroner -- I'll do the math for  
13 you -- 21.96 per share on this combination of  
14 sale and later purchase.

15 Right?

16 A That's correct, yes.

17 Q And each contract was for 100  
18 shares.

19 Right?

20 A Yes. The multiplier is a hundred.

21 Q Okay. Mr. Dubinsky, in your  
22 opening report, you give several reasons why,  
23 in your view, the pension plan trades were  
24 not real.

25 Right?

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1 A Yes.

2 Q And one of those reasons you say is  
3 that Solo Capital prearranged all of the  
4 transactions.

5 Right?

6 A Yes.

7 Q If we go to your opening report at  
8 Page 78, Paragraph 205?

9 A Yes.

10 Q Are you with me?

11 A Yes.

12 Q Okay. Second sentence of Paragraph  
13 205 of your report, "Specifically,  
14 Solo Capital selected the particular stock or  
15 security that was purportedly going to be  
16 traded, the allocation of shares to each  
17 plan, and the information related to which  
18 broker and other counterparties would be used  
19 for the hedging in stock loan transaction."

20 Do you see that?

21 A Yes.

22 Q So as you say, Solo selected the  
23 stocks and securities before the plans  
24 traded, and the brokers and counterparties  
25 that those plans could use for the hedging

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1 transactions that the plans would do.

2 Right?

3 A That's what I stated there, yes.

4 Q Okay. But you say in your reply  
5 report that the futures contracts traded by  
6 the plans, one category of hedging  
7 transactions, those were real.

8 Right?

9 A Correct. Those actually occurred,  
10 yes.

11 Q Even though they were prearranged  
12 by Solo.

13 Right?

14 A That's correct, yes.

15 Q Let's look further down on this  
16 Page 78, Paragraph 207. I think it goes on  
17 to the next page. I want to read the last  
18 sentence there.

19 "Further, the fact that 34 plans in  
20 this example were participating in one  
21 transaction -- in this one transaction also  
22 shows that the transactions were not custom  
23 tailored to each plan based on their own risk  
24 profile, investment strategy, or time  
25 horizon, but rather, these transactions were

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1 simply carved up and doled out to each plan  
2 by Solo Capital."

3 Do you see that?

4 A Yes. You read that correctly.

5 Q The same can be said of the futures  
6 trades.

7 Right?

8 MR. WEINSTEIN: Objection to form.

9 A I would have to go back and look  
10 and see if, on the spreadsheets I was talking  
11 about, the futures were allocated that way.

12 Sitting here today, I don't recall.

13 But they're all part --  
14 nonetheless, the futures were all part of the  
15 transaction that was -- that Solo was  
16 attempting to effectuate.

17 Q Well, all 34 plans used the hedging  
18 trade as part of their overall transaction.

19 Right?

20 A Let me just see. One second here.  
21 (Witness reviewing.)

22 No. I think this series was using  
23 the forwards, not the futures when we're  
24 looking at the example that I gave. So  
25 that's why I think the ones with the futures,

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1 which were earlier, which were traded at  
2 J. P. Morgan, I'd have to go back and see if  
3 those were carved up on a spreadsheet like I  
4 was describing here.

5 Q Okay. You're not sure whether or  
6 not each of the plans engaged in a futures  
7 transaction as a hedge as part of the overall  
8 transaction, sir?

9 A No, that wasn't my testimony. But  
10 you're asking a different question.

11 Q Okay.

12 A I was answering --

13 Q Sorry. What is --

14 A I was answering your earlier  
15 question and I said your earlier transactions  
16 that used futures for it was part of the  
17 chain here that I was describing where it was  
18 carved up. That's what we were talking about  
19 and that's the questions that you were asking  
20 on.

21 These series where it says were  
22 simply carved up were dealing with the  
23 forwards. So these were later, later trades.

24 Q Okay. Let's talk about the  
25 forwards, then.

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1                   You also excluded forwards  
2 contracts from your review in your opening  
3 report.

4                   Right?

5                   A    No, I didn't exclude them from my  
6 review. I footnoted those in the report that  
7 I was not opining on those.

8                   Because, again, the investigation  
9 that I was trying to conduct, that I did  
10 conduct, was focusing on whether there was  
11 evidence that the shares -- the Danish shares  
12 actually existed, and whether if, in fact,  
13 the shares actually existed, dividends were  
14 actually paid.

15                  And I said in the footnote that it  
16 didn't change my opinion, looking at  
17 the -- whether it was the flex futures or  
18 forwards as to whether that meant anything in  
19 the transaction to it.

20                  So it wasn't that I didn't review  
21 them. I knew there were futures, I knew  
22 there were forwards purportedly used.

23                  I just didn't go into detailed  
24 review on those particular parts of the  
25 transaction because I didn't need to.

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1 Q Because you say they had no bearing  
2 on whether the plans purchased or owned  
3 shares or received dividends.

4 Right?

5 A Correct.

6 Q The forward contracts, those were  
7 not executed on an exchange.

8 Right?

9 A That is correct.

10 Q But they were still real contracts,  
11 weren't they?

12 A Well, I think you're asking for a  
13 legal conclusion. I don't know whether they  
14 were legitimate contracts or not.

15 There were -- there were  
16 forward -- forwards that were purportedly  
17 used in the transaction. But beyond that, I  
18 can't comment.

19 Q Well, you're willing to say that  
20 the futures contracts were real.

21 Right?

22 A Yes, because I saw those. There  
23 was actual evidence from the -- J.P. Morgan  
24 that those existed.

25 Q You don't view that as a legal

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1 conclusion, but you view whether or not the  
2 forward contracts were real as a legal  
3 conclusion?

4 Is that your testimony?

5 MR. WEINSTEIN: Objection to form.

6 A No, I think there's a difference.  
7 I was looking at the existence and whether  
8 there was third-party cooperating evidence  
9 for the -- for the futures, which there was.

10 Q Okay. Let's look at Tab 5219.

11 MR. BONGIORNO: Mark that as 5219.  
12 (Whereupon the above mentioned was  
13 marked for Identification.)

14 Q Do you have that in front of you?

15 A I do, yes.

16 Q Do you know whether you've seen  
17 this document before?

18 A I probably did because it deals  
19 with RJM and I looked at RJM. I think that  
20 was one of the bellwethers that was selected.

21 So yes, I think I've seen this.

22 Q Okay. And this is -- it says it's  
23 an equity forward transaction at the top of  
24 the page.

25 Do you see that?

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1 A Yes.

2 Q It's dated February 27, 2014?

3 A Yes.

4 Q And it's an agreement between  
5 Amalthea Enterprises Limited and the RJM  
6 Capital Pension Plan.

7 Correct?

8 A Yes.

9 Q On the first page, you see  
10 something entitled "General Terms?"

11 A Yes.

12 Q Okay. And on the second page, you  
13 see sections entitled "Equity Terms" and  
14 "Settlement Terms."

15 Right?

16 A Yes.

17 Q You don't offer any opinion on the  
18 terms of this contract, do you?

19 A No, I don't.

20 Q You don't know whether or not  
21 counsel was consulted in drafting of this  
22 forward contract, do you?

23 A I don't.

24 Q Do you know whether or not this  
25 document was negotiated and accepted by the

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1 parties?

2 A Again, it's signed by two people,  
3 but I don't know about the negotiation  
4 between the two parties. I think  
5 there's -- I recall there was some testimony  
6 that none of these terms, that some of the  
7 people in the pension plan didn't know what  
8 the terms were and hadn't negotiated, but  
9 that's my general recollection.

10 Q That's not part of -- that doesn't  
11 form any part of the basis for your opinion  
12 in this case, what you just said, does it?

13 A No. No, it doesn't. I think just  
14 from the standpoint of -- it certainly -- no,  
15 it goes to the facts that come out at trial,  
16 it would be interesting that you had pension  
17 plans that are newly formed and newly formed  
18 LLCs, if, in fact, that that's the testimony  
19 that comes out at trial.

20 That would be, to me, anyway, very  
21 telling about the nature of these  
22 transactions.

23 Q Do you know when RJM Capital was  
24 formed?

25 A Not off the top of my head. I'd

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1 have to go back and see if it's on one of the  
2 exhibits to my report, if you give me a  
3 minute. It might be.

4 MR. WEINSTEIN: Just to be clear,  
5 are we talking about the LLC or the  
6 plan?

7 MR. BONGIORNO: RJM Capital LLC  
8 Pension Plan, which is the signatory to  
9 this document.

10 A Give me one second.

11 (Witness reviewing.)

12 RJM was -- RJM Capital LLC. Oh,  
13 the pension plan. Let me see if I've got the  
14 plan.

15 Q No, that's okay. You can answer  
16 with regard to RJM Capital LLC since it looks  
17 like you found that answer.

18 A Well, the pension plan was formed  
19 on February 1, 2013, it looks like by Mr. --

20 Q What about the -- sorry. I didn't  
21 mean to interrupt you, sir. Go ahead.

22 A And the related LLC appears to have  
23 been formed July 17, 2007.

24 Q Okay. So the LLC itself had been  
25 in existence for six years or so at this

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1 point?

2 A In this particular example. I was  
3 looking at Exhibit 1.01 in my report.

4 If you look at that, you can see  
5 many of the LLCs were formed right around the  
6 time the transactions and pension plans --  
7 related pension plan was formed.

8 This one happens to be a little  
9 bit older.

10 Q Six years older?

11 A Yes. I mean, you can see, for  
12 instance, on that same exhibit, Trade and  
13 Investments LLC Pension Plan, formed  
14 February 1, 2013, the LLC is a day before  
15 that, January 30, 2013.

16 So a lot of them, when you look at  
17 the -- this is just the Argre plans. But if  
18 you look at the Kaye Scholer plans, a lot of  
19 those dates are very close in nature.

20 Plan formation date, LLC formation  
21 date, very close.

22 Q But the RJM Capital LLC was formed  
23 in 2007, you said?

24 A Correct.

25 Q And this document is from 2014.

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1 Right?

2 A I lost my place in the documents.

3 What was the document that we were  
4 looking at?

5 Q Sorry. We were looking at Exhibit  
6 5219, the forward contract.

7 A Yes. This forward was February 27,  
8 2014.

9 Q And I think we talked about,  
10 before, how you reviewed over 2,500 trades.

11 Right?

12 A Yeah, and I just want to clarify  
13 the last answer before we move on.

14 Q Sure.

15 A Looking at 5219, it's the parties.  
16 When you had asked me had the parties signed  
17 this, I guess it's Amalthea Enterprises had  
18 signed and someone on behalf of RJM Capital  
19 LLC Pension Plan.

20 So the pension plan was formed  
21 about a year -- it looks like a year prior to  
22 this document.

23 What was your next question?

24 Q It was -- we were -- I was just  
25 kind of setting the table for the fact that

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1 you reviewed over 2500 trades.

2 Right?

3 A Right, yes.

4 Q Okay.

5 A Well, I would say 2559  
6 transactions. Each transaction --

7 Q Sorry.

8 A -- had different legs to it.

9 Q And you focused primarily on what  
10 the parties were referring to as "bellwether  
11 plans."

12 Right?

13 A Correct. Well, I had looked  
14 at -- in the report, I described the  
15 bellwether plans, but I had looked at  
16 transactions in the documents for 2,559  
17 transactions.

18 But the bellwether plans, as I  
19 understand it, were agreed upon between the  
20 parties as sort of demonstrative of the  
21 transactions I think the judge had asked the  
22 parties to agree on.

23 That's my understanding.

24 Q Okay. In your view, is the -- all  
25 2,559 of what you refer to as the Solo trades

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1        were basically clones of each other.

2                Right?

3        A    Well, I would say basically. I  
4        mean, there were -- there was a simple loop  
5        in the beginning, and then a complex loop  
6        later on where there were different layers  
7        added.

8                But when you look at the purported  
9        substance of all of the transactions and the  
10       way it was supposed to work, I think it's  
11       fair to conclude they're all clones,  
12       basically clones.

13        Q    And one of those transactions is  
14       the March 2013 transaction done by the  
15       Bernina plan in shares of Carlsberg.

16                Right?

17        A    Correct.

18        Q    When you reviewed this transaction,  
19       you reviewed some of the underlying documents  
20       and cited them in your report.

21                Right?

22        A    Correct.

23        Q    Why don't we look at Figure 10 in  
24       your report, your opening report,  
25       Exhibit 5200. It's on Page 52.

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1 A Hold on, there's -- oh, it's just a  
2 fire top, okay.

3 What page?

4 Q It is Page 52, and I'm pointing you  
5 to Figure 10.

6 A 5200, Figure 10, which is Page 50.

7 Q Let me double-check that on my end.

8 Yeah, so you are correct. Page 50,  
9 Figure 10.

10 The document that is shown here,  
11 you call this a "Trade Confirmation from  
12 Solo Capital to the Bernina Plan."

13 Do you see that?

14 A Yes, that's how I labeled it, yes.

15 Q Okay. The subject line of this  
16 e-mail says "Account BER 01 Trade Approved."

17 Right?

18 A Correct.

19 Q This is not an actual trade  
20 confirmation, is it? It's just an e-mail.

21 Right?

22 A That's correct, yes.

23 Q Now, let's look at Tab 5217.

24 A Okay.

25 Q I think this has already been

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1 marked, but -- marked as Exhibit 5217 as  
2 well.

3 Turn to the attachment at the  
4 second page, "Cash Equity Confirmation."

5 Do you see that?

6 A Yes.

7 Q It ends in Bates 75374.

8 Right?

9 A Yes.

10 Q And this was sent by FGC Securities  
11 LLC?

12 A Yes.

13 Q And they're located in New York.

14 Right?

15 A That's what it says, yes.

16 Q Okay. And if you look at Tab 5220?  
17 And we'll mark that next as Exhibit 5220.

18 MR. BONGIORNO: Mark this  
19 Exhibit 5220.

20 (Whereupon the above mentioned was  
21 marked for Identification.)

22 A Yes.

23 Q This is a printout from a service  
24 called BrokerCheck.

25 Have you ever heard of BrokerCheck?

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1 A Yes.

2 Q And you see that FGC reports to  
3 FINRA.

4 Right?

5 A They're -- it says they're  
6 registered with FINRA, yes.

7 Q And FGC is located in New York?

8 A I mean, I can't confirm factually.  
9 All I can tell you is it says at the  
10 time -- let me see if there's a date on what  
11 you're asking me, first of all. 5220.

12 I don't know when this -- is there  
13 a date on this?

14 Q It's at the end. It says,  
15 "Copyright 2022 FINRA."

16 A Yes.

17 Q On the very last page.

18 A Right.

19 Q For what that's worth.

20 A Right. I mean, it indicates the  
21 main address is in New York.

22 Q And it says, "SEC registration  
23 approved November 26, 2012."

24 Do you see that?

25 A Yes.

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1 Q Let's go back to -- well, let's go  
2 actually to Tab 5221.

3 MR. BONGIORNO: Mark that as the  
4 next exhibit, 5221.

5 (Whereupon the above mentioned was  
6 marked for identification.)

7 A Okay.

8 Q This is a SEC document, "Investor  
9 Bulletin: How to Read Confirmation  
10 Statements."

11 Do you see that? Do you have that  
12 in front of you, sir?

13 A Yes, I have it, yes.

14 Q Okay.

15 A Yes, it's titled, it says,  
16 "Investor Bulletin: How to Read Confirmation  
17 Statements."

18 Q Okay. And then it says, "What is a  
19 confirmation statement?" And I'll just read  
20 that.

21 "Under SEC rules, whenever you  
22 purchase or sell a security, the broker  
23 dealer through whom you bought or sold the  
24 security is generally required to give or  
25 send you a written notification or

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1 confirmation with information about the  
2 transaction. The confirmation statement  
3 contains basic information about the  
4 transaction, such as the identity of the  
5 security, the amount of the securities you  
6 purchased or sold, and the price that you  
7 paid or received."

8 Do you see that?

9 A Yes, I see that.

10 Q Okay. Looking back at Tab 5217, it  
11 says that the transaction was a buy of  
12 600,000 shares of Carlsberg by Bernina at a  
13 per share price of Danish kroner 586.3316.

14 Right?

15 A Yes, I see that.

16 Q And it does not specify the  
17 identity of any counterparty to this trade.

18 Right?

19 A That is correct.

20 Q It does not say whether the seller  
21 is a long seller or a short seller.

22 Right?

23 A That is correct.

24 Q And it certainly doesn't say  
25 anything about the shares being fictitious.

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1 Right?

2 A That is correct.

3 Q And underneath --

4 MR. WEINSTEIN: Michael, can you  
5 just hold on?

6 THE WITNESS: There's a fire  
7 announcement.

8 MR. BONGIORNO: Okay. I know we're  
9 in the middle of an exhibit, but we're  
10 getting close to having gone for an  
11 hour. Do you want to take a break now?

12 My hope is that the drilling that's  
13 going on next door to us will expire as  
14 well.

15 MR. WEINSTEIN: Our fire  
16 announcement ended, but -- so it's up to  
17 you. If you want a few more minutes on  
18 this exhibit, go ahead. If not, we can  
19 take a break.

20 MR. BONGIORNO: Yeah, sure. Thank  
21 you. Why don't we just wrap this up and  
22 then we'll take a break.

23 Q At the top of the page, underneath  
24 where it says "Cash Equity  
25 Confirmation" -- are you with me?

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1                   We're on Tab 5217. Sorry.

2                   A    Yes. Bates number 75374.

3                   Q    I'm sure you're right, but I just  
4                   want to make sure.

5                   A    Okay.

6                   Q    Okay. Underneath where it says  
7                   "Cash Equity Confirmation," can you read that  
8                   sentence?

9                   A    Yes. It says -- do you want me to  
10                  read it out loud or just read it to myself?

11                  Q    Please. Yeah, read it out loud,  
12                  please.

13                  A    Okay.

14                  "Client and FGC Securities agree  
15                  that this confirms the terms and conditions  
16                  of the following cash equity transaction."

17                  Q    Thank you. I'm just getting lazy  
18                  here before lunch. Normally, I would have  
19                  read it to you --

20                  A    Okay.

21                  Q    -- but here we are.

22                  And we saw from the cover e-mail  
23                  that this confirmation was e-mailed to the  
24                  Bernina plan, correct? If you go back to the  
25                  very first page of this exhibit?

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1           A    Yeah. Well, it was e-mailed --  
2    yes, to an authorized representative, Adam  
3    LaRosa.

4           Q    And again, there's nothing on the  
5    face of this confirmation that would tell an  
6    investor that these shares didn't exist.

7               Right?

8           A    Well, nothing -- I guess in your  
9    hypothetical or in your question, are you  
10   assuming that the plan has no other  
11   information about anything, just like in a  
12   vacuum they get this? Because that's not  
13   what this --

14           Q    I'm asking you about this document.

15           A    Well, I think just -- I don't think  
16   that's -- I don't think that hypothetical or  
17   that question -- it's hard for me to answer.  
18   Let me put it this way.

19               If I'm a plan and I get a cash  
20   equity confirmation for millions and millions  
21   of dollars, knowing that I don't have money  
22   in my plan, I mean, certainly bells and  
23   whistles or red flags are going to go off in  
24   my head as to how can I possibly do this kind  
25   of transaction? There's nothing that says

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1 it's fictitious on the face. It doesn't say,  
2 "This is a fictitious transaction, this is a  
3 fraud, this is a fake."

4           But, you know, certainly if I got  
5 this and I'm an investor in a newly-formed  
6 pension plan with very little money, I'm  
7 going to scratch my head pretty hard and say,  
8 "Well, how am I able to execute this?" That  
9 would be my -- my reaction.

10           I can't jump in the head of this  
11 Adam LaRosa and what he might have thought or  
12 what anybody else thought because I can't do  
13 that.

14           All I can tell you is what -- you  
15 know, if I got it, what I would have thought.

16           Q    Okay. But I didn't ask you what  
17 you would have thought if you got this, sir.  
18 Okay?

19           I asked you whether or not there's  
20 anything on the face of this confirmation  
21 that would tell an investor that the shares  
22 didn't exist?

23           MR. WEINSTEIN: Objection to form,  
24 asked and answered.

25           A    You just asked a different question

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1 this time, a slightly different. But no,  
2 there's nothing on the face itself that would  
3 tell you the shares don't exist.

4 But it certainly would cause some  
5 alarms to go off in my mind if I received it.

6 Q Okay. But you're not testifying as  
7 to the state of mind of anybody in this case,  
8 are you, sir?

9 A No, but you asked me is there  
10 anything on the face of this that would -- I  
11 don't know if you said the word "indicate" or  
12 "would show," I forgot the term you used, and  
13 I'm putting -- I'm trying to put myself in  
14 the position of somebody that would have  
15 received this.

16 And I said, in my opinion, yeah, it  
17 would certainly -- I would question it. But  
18 no, it doesn't say on the face of it there's  
19 anything fictitious or that these are a  
20 fraud.

21 Q Let's -- what you just said is not  
22 an opinion that you're offering as an expert  
23 in this case, is it, sir?

24 A Well, one, you just asked me to  
25 look at a document and I answered that. I

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1 think certainly I'd have to go back through  
2 the report.

3 I think I talk about the  
4 transaction and the fact that the LLCs, most  
5 of them, were newly formed, the pension plans  
6 didn't have liquidity. So in the context of  
7 that, someone would certainly have to  
8 question how could they possibly be doing  
9 this type of transaction.

10 But I'm not opine -- I can't opine  
11 on what people thought at that time, that  
12 those are going to have to be facts that come  
13 from fact witnesses at trial.

14 I can't jump into their head.

15 Q When you say "someone would have to  
16 question," is that a legal requirement that  
17 they'd have to question it --

18 A No, I think just --

19 MR. WEINSTEIN: Objection.

20 Q -- or is that just your opinion?

21 A Just general common sense. I mean,  
22 if you -- you know, it's just -- as a newly  
23 formed pension plan with little or no money,  
24 call it 10,000, \$40,000, how in the  
25 world -- if I'm putting myself, and I get

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1 this cash equity confirmation, somebody says,  
2 "Well, Dubinsky, you have this pension plan  
3 and you're going to be able to do this  
4 transaction, and here's the confirm," I'm  
5 like, "What? I don't have any money, how are  
6 we doing this?"

7 I mean, that would be the first  
8 line of inquiry I would go to. But again,  
9 I -- you know, people, I think, have  
10 testified in this case about what they did,  
11 and the facts will be the facts at trial.

12 Q This trade that we were discussing,  
13 the date of the trade was March 21, 2013.

14 A Right?

15 A Correct.

16 Q Okay. Do you know when Carlsberg's  
17 annual general meeting was in 2013?

18 A I don't know off the top of my  
19 head. I mean, they were all pretty close  
20 to -- these purported trades were all pretty  
21 close to the dates of the general assembly  
22 meetings, if I recall.

23 Q Okay. If you look at Dr. Carr's  
24 reply report at Exhibit 5102, there's an  
25 exhibit attached to that report, Exhibit 4.

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1                   Hopefully, you have the exhibits to  
2 his report in your notebook?

3                   A     Yes, I do have it.

4                   Q     Do you -- were you able to find  
5 Exhibit 4 to Dr. Carr's reply report,  
6 Mr. Dubinsky?

7                   A     Yes.

8                   Q     Okay. Do you see there where it  
9 indicates for Carlsberg the annual general  
10 meeting was March 21, 2013?

11                  A     Yes.

12                  Q     So the ex-dividend date, per  
13 Bloomberg, Dr. Carr has listed as March 22,  
14 2013.

15                  Right?

16                  A     Yes.

17                  Q     You don't have any basis to dispute  
18 these dates and this exhibit, do you?

19                  A     I haven't gone through and verified  
20 them all, but I do recall that from the dates  
21 that I found, the equity purchase trade date,  
22 purported trade date, usually occurred at the  
23 end of trading, at the end of the day, right  
24 around -- either on or right around the AGN  
25 date.

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1                   So these, just looking at them,  
2    look right. But one, I guess, the TDC looks  
3    a little off. You know, again, I didn't go  
4    back and verify these dates.

5                   Q    You say that you believe the trades  
6    occurred at the end of the trading day?

7                   A    Correct.

8                   Q    Is that your testimony?

9                   A    That's correct.

10                  Q    Okay. Let's go to -- back to your  
11    Figure 10 in Exhibit 5200, which is your  
12    opening report?

13                  A    5200, Page 50.

14                  Q    Page 50, which is not Page 52, as  
15    you corrected me before.

16                  A    Right.

17                  Q    Do you have Figure 10 in front of  
18    you?

19                  A    I do.

20                  Q    Do you see the time that the e-mail  
21    was sent?

22                  A    Yes.

23                  Q    What is it?

24                  A    1300 hours. It was 1312 --

25                  Q    Do you know what times -- sorry.

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1 A No, I was just saying the minutes  
2 and seconds.

3 Q 1300 hours, 12 minutes, 20 seconds.

4 A Right?

5 A Correct.

6 Q Do you know what time zone that is?

7 A I don't.

8 Q Do you know whether or not this  
9 approval came before or after the annual  
10 general meeting ended?

11 A I don't know one way or the other.

12 Q And that doesn't matter either way  
13 for your opinions in this case, I take it?

14 A No, that wouldn't matter.

15 Q This trade occurred one day prior  
16 to the ex dividend date, though.

17 A Right?

18 A I believe that's correct. I'd have  
19 to look -- let me just see if I say when the  
20 ex-dividend date was on this.

21 (Witness reviewing.)

22 A I'm sorry. I'm looking at a big  
23 binder that's on the side.

24 A I don't know if I have the  
25 ex-dividend date here. I was just looking

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1 for it quickly.

2 Q I can point you to Dr. Carr's  
3 report if you're comfortable with that. We  
4 just looked at what it said in his report.

5 A Sure. What exhibit was that again?

6 Q It was Exhibit 4 to his reply  
7 report, which is 5102.

8 MR. WEINSTEIN: And then, maybe,  
9 Michael, once we've established what  
10 that date is, we can take that break?

11 MR. BONGIORNO: Sure.

12 A (Witness reviewing.)

13 So Dr. Carr has listed the  
14 ex-dividend date per Bloomberg as March 22,  
15 2013. So the purported trade would have  
16 occurred one day before.

17 Q Okay.

18 MR. BONGIORNO: Why don't we go off  
19 the record.

20 THE VIDEOGRAPHER: Stand by. The  
21 time is 11:57 a.m. and we're going off  
22 the record.

23 (Lunch recess taken.)

24 THE VIDEOGRAPHER: Stand by. The  
25 time is 12:42 p.m. and we're back on

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1 record.

2 Q Mr. Dubinsky, I'm going to read you  
3 something and you can tell me if you agree  
4 with it.

5 "As long as a legal binding  
6 agreement has been made on the purchase and  
7 payment of shares on or before the annual  
8 general meeting, the purchaser is entitled to  
9 a dividend declared at that meeting."

10 Do you agree with that?

11 MR. WEINSTEIN: Objection.

12 A One, I think that it's calling for  
13 a legal conclusion. As I said, I'm not a  
14 lawyer.

15 But I think in very general terms,  
16 assuming that the stock is being delivered,  
17 that you would -- that the issuer would be  
18 paying a dividend to the holder of record  
19 that owns the stock after that date.

20 Q Did you review the testimony of the  
21 SKAT designated corporate witness in this  
22 case?

23 A No, I did not.

24 Q Are you aware that there was a SKAT  
25 corporate witness who was designated to

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1 testify in this case on behalf of SKAT?

2 A That was my general understanding.

3 I don't know if it was under the 30(b) (6) or  
4 not.

5 But that was my understanding, that  
6 somebody from SKAT testified.

7 Q You weren't interested in knowing  
8 what that witness had to say?

9 A No. I don't think it was germane  
10 to the investigation I was asked to conduct,  
11 and I don't see that SKAT would have  
12 information as to the custodian and where the  
13 shares were, and whether the dividend was  
14 actually paid in these transactions.

15 Q So you don't know whether the SKAT  
16 designee said anything about trade  
17 settlement.

18 Right?

19 A I don't know one way or the other.

20 Q You don't know whether or not the  
21 statement I just read to you was made by the  
22 SKAT corporate designee.

23 Right?

24 A That would be correct. I don't.

25 Q But you don't know what factual

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1 representations the SKAT corporate designee  
2 made during his testimony.

3                   Correct?

4                   A    That is correct. I didn't see his  
5 testimony and didn't read it.

6                   Q    Let's go to -- back to your opening  
7 report, Exhibit 5200, Paragraph 131.

8                   A    Okay.

9                   Q    It's on Page 39, I think.

10                  A    Okay.

11                  Q    Can you read that paragraph to  
12 yourself? And I'll ask you some questions.

13                  A    Which paragraph was it?

14                  Q    131.

15                  A    Okay.

16                  (Witness reviewing.)

17                  Okay.

18                  Q    Just a question for you.

19                  You can see, in the first sentence  
20 of that paragraph, you reference "actual  
21 dividends?"

22                  A    Yes.

23                  Q    When you say here that the pension  
24 plans did not receive any actual dividends,  
25 you're not offering any kind of opinion about

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1 the plans' entitlement to dividends, are you?

2 A That's correct. The -- I'm sorry.

3 Something just beeped.

4 I think that's a legal conclusion.

5 In that regard, I was just looking for  
6 evidence whether the plans actually received  
7 any actual dividends in this transaction.

8 Q Let's go back to Exhibit 5217.

9 A Okay.

10 Q And we'll go to the last page of  
11 that document.

12 A The one Bates --

13 Q "Cash Equity." Sorry.

14 A Yeah, I was going to say, the one  
15 ending in 75374 Bates number?

16 Q Yes.

17 A Okay.

18 Q The price you see there, "Trade  
19 Price, 586.3316," that was a market price at  
20 that time.

21 Right?

22 A I don't recall specifically on this  
23 whether that was the closing price on that  
24 day. Typically, the trades were purportedly  
25 executed or approved during the day and then

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1 my recollection was it was the end of day  
2 trading price that was used.

3 I don't know specifically on this  
4 one. I would have to go back and look.

5 Q You're not aware of any trades that  
6 were made at something other than the market  
7 price.

8 Is that a fair statement?

9 A I would agree with you, again, in  
10 the context of we had the agreement earlier,  
11 that I'm classifying these as purported  
12 trades.

13 Q Understood. Understood.

14 In the course of your review for  
15 your reports, you saw account statements  
16 issued by Solo custodians.

17 Right?

18 A Yes.

19 Q And you agree that Solo Capital,  
20 Old Park Lane, Telesto Markets and West Point  
21 Derivatives were all registered with the FCA  
22 at the time of the trading discussed in your  
23 reports.

24 Right?

25 A I believe that's true.

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1 Q Okay. Let's go to Tab 222 in your  
2 binder.

3 MR. BONGIORNO: I will have that  
4 marked as the next exhibit, 5222.

5 (Whereupon the above mentioned was  
6 marked for Identification.)

7 A Okay.

8 Q Do you recognize this document?

9 A (Witness reviewing.)

10 Yeah.

11 Q This is an "Open Position  
12 Statement" and it's dated March 31, 2013.

13 Right?

14 A Correct.

15 Q And it's from Solo Capital to the  
16 Bernina Pension Plan.

17 Right?

18 A Yes. Solo Capital Partners LLP,  
19 yes.

20 Q And if you -- if you look at the  
21 call on GC-1 that starts with "Trade Date,"  
22 and another, "Settlement Date?"

23 A Which page are you on? The first  
24 page?

25 Q Yeah. I'm sorry. Second page.

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1 A Okay. I see a column, "Trade Date"  
2 and "Settlement Date," yes.

3 Q And you see another column that  
4 says "Nominal?"

5 A Yes.

6 Q Okay. And if you go down five  
7 entries from the top, you'll see an entry for  
8 Carlsberg.

9 Do you see that under  
10 "Description?"

11 A Yes.

12 Q And that reflects a buy of 600,000  
13 shares of Carlsberg.

14 Right?

15 A Correct.

16 Q And the price listed there is  
17 586.3316.

18 Right?

19 A Correct.

20 Q And if you look toward the top of  
21 the page -- sorry, give me one second. Let's  
22 go to the last page of the document, the one  
23 that ends in 32543.

24 A Okay. I see that.

25 Q And if you look towards the top of

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1 the page, you see an entry for "Dividend  
2 CARLB. "

3 Do you see that?

4 A Yes. I see an entry, yes.

5 Q Okay. And CARLB, that's the ticker  
6 for Carlsberg.

7 Is that your understanding?

8 A Correct.

9 Q And this entry reflects that the  
10 Bernina plan's account was credited with a  
11 dividend amount for Carlsberg shares on  
12 March 27, 2013.

13 Right?

14 A This would indicate that someone at  
15 Solo Capital made an entry on here to reflect  
16 a dividend from Carlsberg. I don't believe  
17 it shows that it was received in cash, but  
18 there's an entry on there.

19 Q But you don't have any basis to  
20 dispute that the Bernina plan received this  
21 account statement from Solo Capital.

22 Right?

23 A I don't know one way or the other.

24 Q And this -- you'll agree that this  
25 document shows a book entry reflecting a

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1 purchase of shares of Carlsberg stock.

2 Right?

3 A You're back to Page 2? Is that  
4 what you're asking?

5 Q Yeah.

6 A Yes, it shows a book entry.

7 Q A book entry reflecting a purchase  
8 of shares of Carlsberg stock.

9 Correct?

10 A Correct.

11 Q And then, on the page we were  
12 looking at just before that, it shows a  
13 credit to Bernina's account for a dividend in  
14 Carlsberg stock.

15 Right?

16 A It shows an entry for that,  
17 correct.

18 Q And none of your opinions rely on  
19 any contention that plans like Bernina did  
20 not get actual statements like this.

21 Right?

22 A Well, as I testified, I don't know  
23 one way or the other whether the Bernina plan  
24 received it or -- and if they did, who  
25 received them, and, if they received them,

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1 whether they even looked at them.

2 I don't know one way or the other.

3 Q Okay. Let's go back to your  
4 report. You opine that the transactions  
5 conducted through Solo Capital were circular.

6 Right?

7 A Yes.

8 Q And let's go to Page 46 of your  
9 opening report, Exhibit 5200.

10 A Okay.

11 Q And here -- sorry.

12 Are you there?

13 A Yes.

14 Q Okay. And here you're examining a  
15 trade -- a transaction by the Bernina plan in  
16 Carlsberg stock in March of 2013. And that's  
17 the same trade that we've been discussing  
18 just now.

19 Right?

20 A Correct.

21 Q You say that FGC Securities  
22 purchased 600,000 shares of Carlsberg at  
23 Danish kroner 586.3316 per share from an  
24 entity called DDC Cayman.

25 Correct?

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1 A Correct.

2 Q And DDC Cayman, that's not one of  
3 the U.S. pension plan investors.

4 Right?

5 A That is correct.

6 Q And this leg of the transaction is  
7 shown in your Figure 9.

8 Right?

9 A (Witness reviewing.)

10 Correct.

11 Q And the documents shown in Figure 9  
12 has an Elysium Bates number.

13 Right?

14 A Correct.

15 Q And we discussed earlier that the  
16 Elysium documents are from Solo Capital's  
17 files.

18 Right?

19 A Correct.

20 Q There's nothing on the face of this  
21 document that you have shown here in Figure 9  
22 that reflects that this e-mail was sent to  
23 any U.S. pension plan.

24 Right?

25 A (Witness reviewing.)

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1                   It doesn't appear on the face of  
2                   it.

3                   That's correct.

4                   Q     And as we discussed earlier, this  
5                   is not a trade confirmation.

6                   Right?

7                   A     That's correct. This is a trade  
8                   approval, an e-mail setting forth all of the  
9                   terms of the purported trade.

10                  Q     By the way, did you look at  
11                  DDC Cayman's account records for all  
12                  financial institutions where it held accounts  
13                  other than Solo?

14                  A     I looked at whatever was available  
15                  in the record for DDC Cayman and looked at  
16                  that. And I certainly looked at the  
17                  DDC Cayman Solo accounts.

18                  I think I talk about it in the  
19                  report. Maybe it's in the -- its either in  
20                  the rebuttal or reply report where I looked  
21                  at the open position statement to see if, in  
22                  the month prior to or the month of this  
23                  purported transaction, DDC Cayman had any  
24                  long position in Carlsberg.

25                  Q     At Solo?

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1 A At Solo, yes.

2 Q So you don't know if DDC Cayman had  
3 holdings in Danish securities outside of  
4 Solo Capital, do you?

5 A I haven't seen any evidence to that  
6 and I haven't seen any evidence, if they did  
7 in your hypothetical, how DDC Cayman would  
8 have gotten the shares into the closed loop  
9 at the Solo custodians. Because those shares  
10 would have needed to transfer into the loop  
11 transaction to be able to then be passed  
12 around in a circular nature that they  
13 purportedly were.

14 So I haven't seen any evidence to  
15 that.

16 Q I'm asking you whether or not you  
17 know whether DDC Cayman had holdings in  
18 Danish securities outside of Solo.

19 That's my question.

20 A Right. And I think I answered that  
21 saying I haven't seen any evidence that they  
22 did, and even if they did have in your  
23 hypothetical, I didn't see evidence where  
24 they would have transferred that into the  
25 Solo sub-custodians to effectuate the trade.

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1                   And it wouldn't make sense anyway,  
2   at that point, if -- well, I'll leave it at  
3   that. I didn't see any evidence that they  
4   transferred them in.

5                   So I haven't seen any -- I haven't  
6   seen any evidence they existed outside and I  
7   didn't see any evidence from DDC Cayman that  
8   they transferred shares from any outside  
9   brokerage firm into the Solo structure.

10                  Q    So is it your testimony that it  
11   does not matter to you whether or not  
12   DDC Cayman held Danish shares in accounts  
13   outside of Solo?

14                  A    No, that wasn't my testimony. I  
15   said if there's evidence to that, I haven't  
16   seen it. And certainly Dr. Carr hasn't  
17   presented evidence of that.

18                  And so there is no evidence in this  
19   case to that. So your hypothetical, I  
20   just -- it's not that it's not important to  
21   me.

22                  If somebody shows me that  
23   DDC Cayman had these shares and how they were  
24   entered into the structure, I'm happy to look  
25   at it. If you have a document to show that,

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1 I'm more than happy to look at it.

2 Q But you'd be interested to know  
3 whether or not DDC Cayman had holdings in  
4 Danish securities outside of Solo Capital.

5 Is that a fair statement?

6 A No. The fair --

7 MR. WEINSTEIN: Objection, asked  
8 and answered.

9 A The statement was if you have a  
10 document showing that DDC Cayman had these  
11 Carlsberg shares outside the structure and  
12 documents to show how they were put into the  
13 structure, I'm happy to look at that. I said  
14 what I reviewed, I didn't see any, and  
15 Dr. Carr apparently didn't have them either  
16 or they'd be front and center.

17 I think that's pretty apparent.

18 Q Bernina purchased 600,000 shares of  
19 Carlsberg at a price of 586.3316 Danish  
20 kroner per share through FGC Securities,  
21 right? That's on your Figure 10 on Page 50,  
22 I hope?

23 A Correct.

24 Q And this e-mail went to the Bernina  
25 Pension Plan.

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1                   Correct?

2                   A    Well, I don't know if it actually  
3                   went to them or not. It's addressed to  
4                   somebody, Adam@Bernina P.com.

5                   I don't know one way or another if  
6                   it actually went to them or not, and if it  
7                   did, if anybody read it or what they did with  
8                   it.

9                   Q    In another leg of the transaction,  
10                   the Bernina plan loaned shares to an entity  
11                   called Colbrook Limited.

12                   Right?

13                   A    Correct.

14                   Q    That's in Figure 12 which I  
15                   believe, actually, is on Page 52.

16                   Right?

17                   A    That is correct. And it's also  
18                   referenced in Figure 13.

19                   Q    And this e-mail, we can agree at  
20                   least, it was addressed to  
21                   Adam@Bernina P.com.

22                   Right?

23                   A    Yes, we can agree on that.

24                   Q    And if you turn to Page 54 of your  
25                   report, Paragraph 169?

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1 A Yeah.

2 Q Your report says that in another  
3 step of the transaction, Colbrook loaned the  
4 same shares to DDC Cayman.

5 Right?

6 A Yes.

7 Q And we discussed earlier that  
8 shares in Denmark are dematerialized.

9 Right?

10 A Correct.

11 Q The shares exist electronically in  
12 book entry.

13 Right?

14 A Real shares you're talking about?  
15 Yes, they would exist in dematerialized and  
16 book entry form at the -- both at the issuer  
17 and the central security depository.

18 Q So you don't know that Colbrook  
19 loaned the same shares to DDC Cayman, right?  
20 That's something you're surmising?

21 A Well, I think you have to look at  
22 the flow, and the same amount of shares is  
23 moving almost simultaneously throughout the  
24 structure. And so it doesn't really matter  
25 to me whether they're the -- you know, like

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1 dollars are fungible.

2 I don't really care if it was the  
3 exact same shares specifically or not. The  
4 structure is moving the same shares around in  
5 a circular nature and DDC Cayman ends up  
6 getting back the shares that it purportedly  
7 sold in the first place that it never had.

8 So that when I say "same shares,"  
9 if you look at the totality of what's going  
10 on, yes, I think the substance is that's  
11 exactly what happened.

12 Q But that's your surmise, right?

13 You don't know that?

14 A Well, that's my opinion. I mean, I  
15 haven't seen evidence to -- otherwise.

16 Q And you say you don't care if it  
17 was the exact same shares or not.

18 Right?

19 A It doesn't -- doesn't matter to me  
20 in that sense. I'm looking at the flow and  
21 the fact that the 600,000, the same pricing  
22 all the way through, and it moves in stepped  
23 fashion. This is almost like a step  
24 transaction.

25 It's all preplanned, preapproved,

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1 and that's what I was pointing out. That's  
2 the purpose of explaining so the judge and/or  
3 jury can understand, that this is just a  
4 circle.

5 Q Let's look at Page 55, Figure 14 in  
6 your report.

7 A Okay.

8 Q This is an e-mail discussing a  
9 stock loan.

10 Right?

11 A Correct.

12 Q Did you review Colbrook's account  
13 statements at financial institutions other  
14 than Solo?

15 A I didn't see any account statements  
16 in the record for Colbrook outside of Solo,  
17 so I would have -- my recollection is I would  
18 have looked at what is in the record and that  
19 would have been Solo account statements.

20 Q You didn't see any Colbrook account  
21 statements at financial institutions other  
22 than Solo.

23 Correct?

24 A I would have to go back and  
25 double-check. I mean, there were literally

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1 millions of documents in this case.

2           And sitting here today, I can't  
3 recall each specific one, but nothing is  
4 coming top of mind that there would have been  
5 an external account statement for Colbrook  
6 showing any stock owned.

7           Q     If such documents existed, is that  
8 something you would have wanted to see?

9           A     If there were documents that showed  
10 Colbrook actually had a position in Carlsberg  
11 at 600,000 shares and they put those into the  
12 Solo transaction, yes, I would have -- that  
13 would have been a document that I would like  
14 to see.

15           Q     What if they had 600,000 shares but  
16 didn't, as you say, put it into the Solo  
17 transaction? Is that something that you  
18 would want to see?

19           A     It would -- it certainly would be  
20 interesting if those shares existed  
21 somewhere. I haven't seen any evidence to  
22 suggest that they existed.

23           Q     The document -- let's go back to  
24 Figure 14, Page 55 of your report.

25                   That document is, again, a document

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1 from the Elysium documents.

2 Right?

3 A Yes.

4 Q And there's nothing on the face of  
5 this document that you have shown here in  
6 Figure 14 that reflects that it was sent to  
7 any U.S. pension plan.

8 Right?

9 A The only reason I'm hesitating to  
10 answer your question, something in the back  
11 of my mind, I thought Martin Smith actually  
12 owned some pension plans. But I'd have to go  
13 back and check.

14 But this was sent to Martin Smith  
15 at Colbrook. I know there's crossover  
16 between some of the people involved at the  
17 counterparties and some of the people that  
18 also had pension plans.

19 I'd need to go back and  
20 cross-reference that.

21 Q But it didn't go to -- to the  
22 extent it went to somebody named Martin  
23 Smith, it went to a Colbrook Limited address,  
24 not a U.S. pension plan address.

25 Right?

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1 A Yes, but that wasn't the question  
2 you asked. So just to clarify, yes, this is  
3 going to a Colbrook e-mail address.

4 You asked me, in your earlier  
5 question, do I know if this e-mail went to  
6 anybody at a U.S. pension plan, I think was  
7 your question, and that's what I wanted to  
8 clarify.

9 Q But these documents reflected in  
10 Figures 9 and 14, neither one of them went to  
11 a U.S. pension plan.

12 A Right?

13 A Well, let me just go back and look  
14 at what 9 was.

15 MR. WEINSTEIN: Objection, asked  
16 and answered.

17 A (Witness reviewing.)

18 Q Let me ask you a different  
19 question.

20 Neither of the documents reflected  
21 in your Figures 9 and 14 went to Bernina, did  
22 they?

23 A I don't see anything that  
24 would -- on the face of it that would  
25 indicate whether they did or not. I don't

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1 know one way or another where these documents  
2 went, so I can't say.

3 Q And in order to determine what you  
4 called the "closed loop," you needed to see  
5 these documents, didn't you?

6 A Correct. These were the steps of  
7 the purported transaction.

8 Q Mr. Dubinsky, you're not an expert  
9 in trade settlement operations.

10 A Right?

11 A That is correct. I wouldn't  
12 consider myself an expert in trade  
13 settlement.

14 I do have some experience with it,  
15 but I'm not being proffered here and I  
16 understand somebody else is dealing with  
17 trades and settlement issues.

18 Q Do you understand what "net  
19 settlement" is?

20 A As a general concept, yes.

21 Q It's a -- two or more transactions  
22 that offset each other in settlement.

23 A Is that right?

24 A Well, I think that's a very general  
25 description. You know, it's a -- very

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1 open-ended. I think I describe in my -- I  
2 think it's in the reply report -- I'd have to  
3 go look either in the rebuttal or reply  
4 report what my understanding of the net  
5 settlement is.

6 Q You can't describe what your  
7 understanding of net settlement is without  
8 looking at your reply report, sir?

9 MR. WEINSTEIN: Objection to form.

10 A No, I didn't say that. I  
11 said -- you asked me is -- do I agree with  
12 your definition. I said your definition is a  
13 very general definition.

14 I provided what my understanding  
15 was in one of my reports.

16 Q Okay. Why don't you provide it to  
17 us now.

18 What's your understanding of what  
19 "net settlement" is?

20 A Well, my general understanding of  
21 net settlement is that a buyer and seller  
22 within the same brokerage firm, same  
23 custodian, if the shares exist and one is  
24 selling and one is buying, that in general,  
25 there can be an offsetting book entry at the

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1 broker because the shares are already sitting  
2 at the -- either custodian or sub-custodian  
3 and don't need to move.

4 So that's my understanding, in  
5 general, of what a net settlement -- how that  
6 would work.

7 Q So, in your understanding, the  
8 shares have to be held at the custodian or  
9 sub-custodian for a net settlement to occur?  
10 Is that your testimony?

11 A Again, that's my general  
12 understanding of when a net settlement would  
13 occur. There may be nuances to that.

14 Again, I'm not an expert in net  
15 settlement.

16 Q Okay. Let's go to your reply  
17 report at Page 8. It's Exhibit 5202.

18 A Okay.

19 Q At Heading B, you say, "In order  
20 for a custodian to be able to internally net  
21 settle offsetting trades, the shares have to  
22 actually exist."

23 Do you see that?

24 A Yes.

25 Q What do you mean by "exist?"

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1 A Common -- common word, of the  
2 meaning of it. The shares have to be there.

3 So the custodian has to have the  
4 shares in some sort of record format. In the  
5 days before they were dematerialized, they  
6 would have been a paper share format.

7 Once they dematerialized, they'd be  
8 in record format so there would be an  
9 electronic record. But they need to actually  
10 have settled and be at that custodian.

11 There needs to be a record of it.

12 Q Do you have your reply report in  
13 front of you still?

14 A I do, yeah.

15 Q Okay. And starting at Paragraph 26  
16 going to 27, 28, and 29 on the next page, you  
17 discuss net settlement.

18 Right?

19 A Correct.

20 Q And in all of this discussion, you  
21 have one footnote there?

22 A Correct.

23 Q And that footnote is a citation to  
24 Dr. Carr's rebuttal report.

25 Right?

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1 A Correct.

2 Q And you don't cite any literature  
3 about market operations or any source  
4 whatsoever for your discussion of net  
5 settlement.

6 Is that a fair statement?

7 A In the -- in this section, that's  
8 correct, yes. I don't.

9 Q Okay. Let's go back to Page 8,  
10 Paragraph 27. I'm going to point you to the  
11 second sentence there where you say, "Under a  
12 hypothetical scenario in which there is proof  
13 that the shares did exist and were present at  
14 a custodian, I agree."

15 You're referring back, obviously,  
16 to the prior sentence?

17 A Correct.

18 Q And so you don't dispute that net  
19 settlement is, of course, possible in certain  
20 situations.

21 Correct?

22 A That's correct.

23 Q And that brokers or custodians can  
24 settle trades on a net basis.

25 Right?

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1 A As a general concept, that's  
2 correct.

3 Q Okay. If you go to the bottom of  
4 Page 8, just read Paragraph 28 to yourself,  
5 please.

6 A (Witness reviewing.)

7 Okay.

8 Q And in the last sentence of that  
9 paragraph, you say, "In other words, the  
10 sub-custodian cannot net settle internally if  
11 the selling party to the transaction never  
12 actually possesses the shares; there would be  
13 nothing to, quote, net settle, closed quote."

14 Do you see that?

15 A Yes.

16 Q And again, you don't cite anything  
17 to support that statement in this paragraph,  
18 do you?

19 A That's correct.

20 Q Did you -- before you filed this  
21 reply report, did you read any sources about  
22 net settlement?

23 A Not that I recall. Just my general  
24 understanding of how net settlement would  
25 work.

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1 Q Did you read any sources about  
2 internalized settlement?

3 A No.

4 Q Let's go to Tab 5114 of your  
5 binder. It's toward the front of the binder.

6 A I've got it.

7 Q You've heard of the European  
8 Securities and Markets Authority, ESMA.

9 Right?

10 A Yes.

11 Q And the document you have in front  
12 of you is titled, "Guidelines on Internalized  
13 Settlement Reporting Under Article 9 of  
14 CSDR."

15 Right?

16 A Correct.

17 Q Have you seen this before?

18 A Doesn't look familiar to me.

19 Q Okay. It was cited in Dr. Carr's  
20 reply report at Page 32, Footnote 92.

21 A All right. Let me --

22 Q Did you look at -- sorry. Go  
23 ahead.

24 You can look at that citation.

25 A Sorry. Just the reply report, you

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1 said?

2 Q Dr. Carr's reply report at Page 32,  
3 at Footnote 92.

4 A (Witness reviewing.)

5 Okay. I see where he references  
6 it.

7 Q Okay. Did you review sources like  
8 this in Dr. Carr's reply report when you were  
9 reviewing his report?

10 A No, I did not.

11 Q Let's turn to Page 3. Let's go  
12 back to Exhibit 5114 and go to Page 3.

13 Okay?

14 A Okay.

15 Q And I'm going to point you to  
16 Paragraphs 10-A and 10-B.

17 10-A says, "A settlement  
18 internalizer receives a settlement  
19 instruction from a client regarding  
20 settlement of a securities transaction and  
21 the settlement instruction is not forwarded  
22 in its entirety to another entity along the  
23 holding chain."

24 And then, "B" says, "Such a  
25 settlement instruction results or are

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1 supposed to result in a transfer of  
2 securities from one securities account to  
3 another in the books of the settlement  
4 internalizer without any external parallel  
5 securities movement along the holding chain."

6 Do you see that?

7 A Yes, I see that.

8 Q This description of internalization  
9 reflects that in some context the settlement  
10 instruction may result without involving  
11 external parties in a holding chain.

12 Correct?

13 A Again, this is the first time I'm  
14 seeing this document. I haven't gone through  
15 it. I'm not a -- I'm not professing to be an  
16 expert in net settlement.

17 So without going through this and  
18 trying to decipher it, I don't know. I mean,  
19 it says what it says and you read it.

20 Q You don't know whether or not it  
21 reflects that in some context, settlement may  
22 occur without any external parallel  
23 securities movement along the holding chain?

24 A That's what it seems to indicate,  
25 under certain circumstances. I don't know,

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1 you know, all the nuances of when that would  
2 occur.

3 Q So would you agree with me that a  
4 sub-custodian's records in this context of  
5 settlement may not show any movement in  
6 shares?

7 A Again, I can't interpret this. I  
8 know there's another expert in the case  
9 that's dealing with trading issues.

10 I do note that it says, "from one  
11 securities account to another in the books of  
12 the settlement internalizer," which to me  
13 would mean that both of them have an account  
14 at that settlement internalizer, and  
15 therefore you wouldn't need an external  
16 parallel security movement because they're  
17 already sitting at the same custodian or  
18 sub-custodian.

19 But again, I don't have an opinion  
20 on this document.

21 Q Okay. Why don't we go to the next  
22 one, then, Paragraph 52?

23 I'm sorry. Exhibit 5223, Tab 5223.

24 MR. BONGIORNO: Which I believe are  
25 rules of the London Stock Exchange.

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1 (Whereupon the above mentioned was  
2 marked for Identification.)

3 A What was the number again? There  
4 were several numbers.

5 Q Sorry. 5223.

6 A Okay. I'm there.

7 Q Have you seen this document before,  
8 Exhibit 5223?

9 A No, I haven't.

10 Q And again, this was cited in  
11 Dr. Carr's reply report at Paragraph 68.

12 A Okay.

13 Q I don't know -- okay. Why don't  
14 you turn to Page 61 of the document?

15 A Okay.

16 Q The heading there says "Settlement  
17 Clearing of Benefit Rules."

18 Right?

19 A Yes.

20 Q Okay. And then, further in that  
21 section, the heading to which I just read to  
22 you -- we'll go to Page 68, please?

23 A Okay.

24 Q Do you see where it says -- sorry.  
25 Do you see where it says "Net

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1 Settlements Effect of Settlement?"

2 A I see where it says that.

3 Q Okay. And then you see a Rule  
4 G-5140?

5 A Yes.

6 Q "Obligations: The obligations of  
7 the central counterparty party, the clearing  
8 member, and the non-clearing member in  
9 respect of the trade shall be performed when  
10 the net settlement is settled in accordance  
11 with the terms of the central counterparty  
12 netting service."

13 Then, underneath, it says "Guidance  
14 to the Rule," which says, "Under the terms of  
15 the central counterparty netting service, a  
16 net settlement which results in a zero cash  
17 and zero stock position may still be created,  
18 settle on ISD, and be time-stamped at the  
19 time of settlement. In such case, the  
20 relevant central counterparty contracts are  
21 performed at the time indicated by the  
22 relevant time stamp."

23 Do you see that?

24 A I do see that, yeah.

25 Q This is saying that a net

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1 settlement position -- sorry.

2 This is saying that a net  
3 settlement can result in zero cash and a  
4 zero stock position.

5 Correct?

6 MR. WEINSTEIN: Objection to form.

7 A Again, this is a lengthy document.  
8 This is the first time I've seen this  
9 document. I'm not an expert on the London  
10 Stock Exchange rules.

11 I haven't gone through this. I  
12 think there are a lot of caveats in here. I  
13 don't know what the terms of the central  
14 counterparty netting service would say.

15 So I really can't opine one way or  
16 the other on this.

17 Q Okay. So you're not familiar with  
18 this rule.

19 Is that a fair statement?

20 A I haven't seen this before, so no,  
21 I'm not familiar with it.

22 Q And it doesn't affect your opinions  
23 either way, what this rule may or may not  
24 say?

25 A No, it does not.

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1 Q Let's go back to your reply report,  
2 which is Exhibit 5202.

3 Again, back to Paragraph 27 on Page  
4 8.

5 A Okay.

6 Q And you say here that net  
7 settlement requires an existing long position  
8 of the seller at the custodian.

9 Right?

10 A Where were you reading from?

11 Q I wasn't reading from it directly.

12 But you'd agree with me that it's your  
13 opinion that a net settlement requires an  
14 existing long position of the seller at the  
15 custodian.

16 Right?

17 A Let me just read this for a second.

18 (Witness reviewing.)

19 Q Sure.

20 A (Witness reviewing.)

21 Yes, I say that. It's in the  
22 middle of Paragraph 27, that basically, the  
23 concept as I understand it, the shares have  
24 to already exist at the sub-custodian for the  
25 sub-custodian to net settle.

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1                   So both -- you know, the shares  
2 have to be there. You can't net settle  
3 something that doesn't already exist on their  
4 platform.

5                   That's my understanding.

6                   Q     You don't cite anything to support  
7 that in this paragraph, do you?

8                   A     No, I don't.

9                   Q     Okay. Let's go to Tab 5123 again.  
10                  This is a document that's already been marked  
11 in the Wade deposition.

12                  5123.

13                  A     Okay.

14                  Q     Do you see this is a "Statement of  
15 Policy, Pillar to Liquidity?"

16                  A     I see that, yes.

17                  Q     Do you see that? And underneath  
18 it, you see the date, and then you see "Bank  
19 of England?"

20                  A     Yes.

21                  Q     Okay. Have you seen this document  
22 before?

23                  A     I have not.

24                  Q     And again, this is a document that  
25 was cited in Dr. Carr's rebuttal report at

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1 Page 49, Paragraph 117.

2 Go to Page 10 of the document and  
3 look at Paragraph 4.19.

4 A (Witness reviewing.)

5 Q Are you there?

6 A Yeah.

7 Q The first sentence of this,  
8 Paragraph 4.19, "Internalization: If a PB  
9 has two clients that are taking opposite  
10 positions on the same asset (one long, the  
11 other short) the PB may internally net these  
12 amounts to avoid having to fund the positions  
13 elsewhere: Client short position is  
14 therefore funding the client long position."

15 Do you see that?

16 A Yes, I see that.

17 Q Would you agree that this document  
18 from the Bank of England says here that a  
19 client's short position can fund a client  
20 long position?

21 Right?

22 A Under the scenario that 4.19 is  
23 setting forth, that the "PB" -- I assume that  
24 means "principal broker." I don't know where  
25 there's -- I guess it's the "prime

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1 brokerage" -- has two clients taking opposite  
2 positions on the same asset, then the prime  
3 brokerage may internally net these amounts.

4 So that's what it says.

5 Q And it says that the prime broker  
6 can avoid having to fund the positions  
7 elsewhere.

8 Right?

9 A That's what it says, yeah, which  
10 would make sense if the --

11 Q That means --

12 A If the position is already there at  
13 the prime broker, then they don't need to go  
14 external to source it somewhere else. It's  
15 already there and they can, according to  
16 this, internalize and offset.

17 Q It doesn't say if the position's  
18 already there in Paragraph 4.19, does it?

19 A Well, I think it's certainly -- I  
20 mean, you're asking me to interpret this.  
21 This is the first time I have seen it. I  
22 haven't gone through this whole document.

23 I think, to me, implicit in that is  
24 when it says if the prime brokerage has two  
25 clients that are taking the opposite

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1 positions on the same asset, to me, implicit,  
2 it means that -- to me, anyway, that they  
3 would be at the prime brokerage.

4 It wouldn't make sense to me  
5 otherwise. But that's just the way I'm  
6 interpreting it.

7 Q Okay. But you're not an expert  
8 on this.

9 Right?

10 A No, but you're asking me a lot of  
11 questions on it.

12 Q Not too many. Let's go to  
13 Tab 5224.

14 MR. BONGIORNO: Mark 5224.

15 (Whereupon the above mentioned was  
16 marked for Identification.)

17 Q And this is a page -- I can  
18 represent to you this is a page from the  
19 SEC's website. We'll mark this as  
20 Exhibit 5224.

21 And the heading is "Stock Purchase  
22 and Sales: Long and Short."

23 Looking at the second paragraph, it  
24 says that "a short position is generally the  
25 sale of a stock you did not own."

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1                   Do you see that?

2                   A    Yes.

3                   Q    And you'd agree, wouldn't you, that  
4    short positions generally involve the sale of  
5    shares that the seller doesn't own?

6                   A    In general terms, yes.

7                   Q    All right. So we've been going for  
8    about, I think, 50 minutes now, and now would  
9    be a good breaking point for me where I am.

10                  A    Okay.

11                  Q    So if you don't mind, we'll take  
12   just a short break now.

13                  A    Sure. Five, ten minutes?

14                  Q    We'll say ten minutes.

15                  MR. BONGIORNO: Marc, is that all  
16   right?

17                  MR. WEINSTEIN: Yeah, that's good.

18                  THE VIDEOGRAPHER: Stand by. The  
19   time is 1:28 p.m. and we're going off  
20   the record.

21                  (Brief recess taken.)

22                  THE VIDEOGRAPHER: Stand by. The  
23   time is 1:45 p.m. and we're back on  
24   record.

25                  Q    Dr. Dubinsky, we may have spoken

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1 about it earlier today, but are you familiar  
2 with the term "beneficial ownership?"

3 A Just in a very general concept.

4 Q So you don't offer any opinions  
5 about beneficial ownership.

6 Right?

7 A No. I think it's a legal concept  
8 and has many different meanings and different  
9 situations, so I haven't issued that type of  
10 opinion, no.

11 Q Would you agree with me that  
12 beneficial ownership is distinct from  
13 questions of economic exposure to a given  
14 security?

15 MR. WEINSTEIN: Objection to form.

16 A I think that's -- you're asking for  
17 a legal distinction or legal conclusion, so I  
18 don't have an opinion on that.

19 Q Would you agree with me that one  
20 country's laws might define "beneficial  
21 ownership" one way and another country's laws  
22 might define it in another way?

23 A I would agree with you, that's  
24 possible.

25 Q And would you agree with me that a

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1 country itself might define "beneficial  
2 ownership" differently for different  
3 purposes?

4 MR. WEINSTEIN: Objection to form.

5 A I would be speculating, but I would  
6 assume that there could be different uses of  
7 the term "beneficial owner" in different  
8 context within a certain country. I'd just  
9 assume that there would be.

10 Q Okay. Are you familiar with -- in  
11 the U.S., the concept of 13-D reports?

12 MR. WEINSTEIN: Objection to form.

13 A I've heard of them.

14 Q Just a level set here, reports that  
15 require a party that has more than 5 percent  
16 beneficial ownership to file a report.  
17 That's what I'm referring to.

18 Q Okay? Does that sound familiar to  
19 you?

20 A It does, yes.

21 Q Okay. Will you go to Tab 5228 of  
22 your binder, which is a copy of a federal  
23 regulation?

24 MR. BONGIORNO: Mark 5228.

25 (Whereupon the above mentioned was

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1 marked for identification.)

2 A Okay. I'm at that tab. It's very  
3 small to read.

4 Q Okay. If you look at A-1 and A-2  
5 under this regulation, it says that  
6 "beneficial ownership includes anyone who has  
7 voting power or investment power."

8 Do you see that?

9 A Under A-1? Yeah. Let me just read  
10 the lead into this.

11 Q Sure.

12 A And again, you know, I'm not a  
13 lawyer and you're asking me to interpret --  
14 this is -- you know, from the U.S. code.

15 (Witness reviewing.)

16 Okay. Yeah. So Number 1 says,  
17 "Voting power, which includes the power to  
18 vote or to direct the voting of, such  
19 security," and then it says, "and/or  
20 investment power, which includes the power to  
21 dispose or to direct the disposition of such  
22 security."

23 Q Okay. And if you go down to D-1?

24 A B-1?

25 Q I'm sorry. "D."

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1 A As in "delta?"

2 Q "D" as in "delta," yeah.

3 There it says, and you can

4 obviously read the whole thing, that someone  
5 can be a beneficial owner "if they have the  
6 right to acquire beneficial ownership of such  
7 a security within 60 days."

8 And I'm going to ask you if you see  
9 that, and take a chance to -- take the  
10 opportunity to read it and ask if you see  
11 that.

12 A (Witness reviewing.)

13 In Delta-1? Delta-1, little "I?"

14 Q Yes.

15 A I'm going to -- I'm really having  
16 trouble even reading it. I've got my glasses  
17 on and I don't see where it says 60 days.

18 Q Well, I'll read it out loud, and  
19 see if you can follow along.

20 "A person shall be deemed to be the  
21 beneficial owner of a security subject to the  
22 provisions of Paragraph B of this rule if  
23 that person has the right to acquire  
24 beneficial ownership of such security as  
25 defined in Rule 13-D-3-A," then there's a

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1        parenthetical, "within 60 days?"

2            A      I see.

3            Q      Then it goes on to say -- do you  
4        see that?

5            A      Yes.

6            Q      And then it goes on to say,  
7        "including but not limited to the right to  
8        acquire, through the exercise of an option,  
9        warrant, or right." Then it goes on.

10           So you see there where it says an  
11        investor, that there -- sorry -- that the  
12        right to acquire might exist because the  
13        party purchases or has been granted a call  
14        option on the stock, right?

15           Is that a fair statement?

16           A      Where did you just jump to? I  
17        don't see that.

18           Q      Well, I just read you the part  
19        about through "the exercise with any option."  
20                 "Any right to acquire through the  
21        exercise of any option."

22                 Do you see that language?

23            A      Yes, I see that.

24            Q      Okay.

25            A      Then it says "warrant or right." I

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1 see that.

2 Q Right. And that's a reference to a  
3 call option.

4 Right?

5 MR. WEINSTEIN: Objection to form.

6 A Well, I don't know. I mean, you're  
7 asking me to interpret this and I'm not a  
8 lawyer or an expert on beneficial ownership  
9 in that regard. And there's a lot of  
10 cross-references to paragraph numbers.

11 I don't know.

12 Q Well, someone who has an option  
13 doesn't necessarily have shares at that point  
14 in time, right? They just have an option to  
15 purchase at a later date.

16 Is that a fair statement?

17 MR. WEINSTEIN: Objection to form.

18 A My answer was, in a general  
19 hypothetical, if I have a call option on an  
20 equity, I don't necessarily have to own that  
21 equity as well.

22 Q So would you agree with me that  
23 beneficial ownership does not require shares  
24 in every case?

25 MR. WEINSTEIN: Objection to form.

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1           A    Again, you're asking for a legal  
2 conclusion. I'm just not comfortable giving  
3 you one.

4           Q    So you would agree with me that  
5 beneficial ownership is a legal question?

6           A    My answer was, in most contexts  
7 where I've seen it, it has been a question of  
8 law and interpretation of law to apply that.  
9 I've seen it in other contexts, but that's  
10 generally where I have seen the term.

11          Q    Okay.

12           MR. BONGIORNO: I don't have any  
13 more questions.

14           Thank you, Mr. Dubinsky.

15           THE WITNESS: Thank you.

16           MR. BONGIORNO: I don't know if  
17 anybody else has questions, but I don't  
18 have any more.

19           MR. LOPICCOLO: Hey, this is Joe  
20 LoPiccolo. Can you hear me?

21           THE WITNESS: Yes, but I can't see  
22 who is talking.

23           MR. LOPICCOLO: Oh, wait. Sorry.  
24 Let me see if this works. Hold on.

25           (Whereupon a discussion was held

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1 off the record.)

2 EXAMINATION BY MR. LOPICCOLO:  
3

4 Q I just have -- so I rep -- I'm with  
5 Poulos LoPiccolo P.C. and I represent a  
6 number of individuals and pension plans  
7 including Roger Lehman and Doston Bradley.

8 A Okay.

9 Q I just have a couple of questions  
10 and I'm going to refer to a document that you  
11 cited to in your initial report. I don't  
12 know if you have -- you just cited to the  
13 Bates numbers, so I don't know if you have  
14 those handy.

15 A I don't. I have my report, but I  
16 don't have any of the backup to the report  
17 with me.

18 MR. LOPICCOLO: Marc, do you want  
19 me to e-mail you the specific document?  
20 Would that make it easier if I'm going  
21 to refer to it?

22 MR. WEINSTEIN: Why don't we do  
23 this. How many documents do you have,  
24 Joe?

25 MR. LOPICCOLO: It's just one.

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1 MR. WEINSTEIN: Okay. Why don't we  
2 take a five-minute break, e-mail it to  
3 me, and we'll try to print out copies  
4 quickly.

5 MR. LOPICCOLO: Okay. That makes  
6 sense.

7 MR. WEINSTEIN: Okay.

8 THE VIDEOGRAPHER: Stand by. The  
9 time is 1:55 p.m. and we're going off  
10 the record.

11 (Brief recess taken.)

12 MR. LOPICCOLO: Mark 5229.

13 (Whereupon the above mentioned was  
14 marked for Identification.)

15 THE VIDEOGRAPHER: Stand by. The  
16 time is 2:10 p.m. and we're back on  
17 record.

18 Q Mr. Dubinsky, again this is Joseph  
19 LoPiccolo with the firm Poulos LoPiccolo P.C.  
20 I represent a number of defendants and  
21 associated pension plans, including Roger  
22 Lehman and Boston Bradley.

23 So I just have a couple of  
24 questions. And we pulled one of the exhibits  
25 or one of the -- one of your cites in your

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1 initial report.

2 And it's cited -- you cite it at  
3 Footnote 299. It's Bates stamped  
4 Elysium 053115871.

5 A Correct.

6 MR. WEINSTEIN: Actually, I think  
7 you said two "1s" in the middle there.

8 MR. LOPICCOLO: Oh, did I?

9 A 05315871.

10 Q Yeah, that's right. And we'll mark  
11 this as Exhibit 5229.

12 So at Paragraph 243 of your initial  
13 report, you state, "In 2015, the flow of the  
14 payments" -- and again, we're referring -- it  
15 has a subheading of "Lehman Bradley Tucci and  
16 Crescenzo."

17 A Yes.

18 Q Do you see that? Are you there?

19 A I am.

20 Q Okay. And it says, "In 2015, the  
21 flow of the payments was generally as  
22 follows. The plans would pay Ganymede, which  
23 would in turn, transfer funds to Elysium  
24 Global Limited, a BVI entity controlled by  
25 Shah."

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1                   And that's where you have  
2   Footnote 299 and you cite to what we've  
3   marked as 52 -- Exhibit 5229.

4                   A    Correct.

5                   Q    Okay. Did you create this  
6   document?

7                   A    No, I did not.

8                   Q    Do you know who did?

9                   A    I do not.

10                  Q    How did you get it?

11                  A    It was in the Elysium documents.

12                  When I was searching through the Elysium  
13   database looking for flowcharts, this is one  
14   that came up.

15                  Q    Okay. And with respect to  
16   that -- to the statement I just read in  
17   Paragraph 243, is this -- is this your main  
18   support for that statement, this document  
19   5229?

20                  A    No. I think this was just showing  
21   the directional payments.

22                  I think there are documents that I  
23   cite to in the report, in this section and  
24   others, where Ganymede would have an  
25   agreement with the plans to provide services.

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1       Ganymede would invoice for those purported  
2       services, and money was taken out of the Solo  
3       accounts when the reclaim payments actually  
4       came back in, when cash actually was  
5       received, and things were carved up in that  
6       regard.

7           Q     Okay. So with respect to your  
8       reliance on this flowchart, did you analyze  
9       the financial records of Ganymede?

10          A     Whatever was available. I think  
11       there were some financial records of Ganymede  
12       that I've looked at that showed -- I'd have  
13       to go back and look, but I recall there was  
14       very little capitalization of Ganymede. I  
15       know I've looked at formation documents.

16               It would have been cited in the  
17       report.

18          Q     Did you look at -- and if we just  
19       stick on, let's just say the year 2015 where  
20       this statement is made in Paragraph 243 of  
21       your report, did you look at the account  
22       statements, any and all account statements of  
23       Ganymede during that year?

24          A     Let me just see if there are any in  
25       the footnote. I know we've had a lot of the

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1 invoices. Let's see.

2 (Witness reviewing.)

3 I think this section, in going  
4 through this, was predicated on invoices that  
5 I saw. I don't believe I had the Ganymede  
6 account records, bank account records.

7 I'd have to go back and look at  
8 that.

9 Q Okay. And so would you -- so if  
10 you didn't have the account records, would  
11 you be able to confirm all of the credits and  
12 debits of Ganymede bank accounts during that  
13 time period?

14 A Well, if I had the bank records, I  
15 would have gone through that. And again,  
16 sitting here, I just don't recall.

17 I think I had looked at the  
18 invoices that were issued by Ganymede and  
19 then the payments from those, other invoices,  
20 because I recall there were other entities  
21 that invoiced Ganymede for purported  
22 services, and I talk about that in this  
23 section.

24 But short of that, I don't -- let  
25 me just -- let me just look one more time.

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1 (Witness reviewing.)

2 I'd have to go back through the  
3 report and see where I referenced any bank  
4 statements from Ganymede, which I -- sitting  
5 here today, I can't do because I don't have  
6 it electronically.

7 Q You don't recall if you analyzed  
8 the bank statements of Ganymede?

9 A There were a lot of documents in  
10 this. Let me just see.

11 (Witness reviewing.)

12 I don't recall seeing -- you know,  
13 I just can't answer you right now. I'd have  
14 to go back through the report, the whole  
15 report, and see.

16 Q What about, then -- and if you're  
17 looking at that flowchart, the next entity,  
18 Elysium Global Limited, did you analyze any  
19 bank statements -- and we can just  
20 concentrate on 2015 for now -- of that  
21 entity?

22 A I don't believe so.

23 Q All right. What about if we now  
24 cross over to the right-hand side? We'll  
25 start at the top.

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4 A Not that I recall, no.

5 Q And what about Fire Capital One?

6 Did you analyze any bank statements or  
7 financial records of that entity?

8                   A    No.   Again, I don't recall those  
9   existing in the data.

10 Q Okay. The next one is Parla  
11 Global.

12 Did you analyze any financial  
13 records or bank statements of that entity?

14 A I don't recall seeing the bank  
15 statements for that entity.

16 Q Okay. And the next one is  
17 Philo Holdings.

18 Did you analyze any financial  
19 records or bank statements of that entity?

20 A No, I don't recall seeing any bank  
21 statements for that entity.

22 Q Okay. And the next one is Elysium  
23 Global Trading Limited.

24 Did you analyze any financial  
25 records or bank statements of that entity

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1           A    I don't recall seeing any for that  
2 entity, either.

3           Q    And the next one is Quantmetrics  
4 Multi-Strategy Fund. In parenthesis, it says  
5 "U.K."

6                   Did you analyze any financial  
7 records of bank statements of that entity?

8           A    I don't recall seeing bank  
9 statements in the production for that entity.

10          Q    Okay. And then, the last one on  
11 the chart is Elysium Global (Dubai) Limited.

12          Did you analyze any financial  
13 records of bank statements for that entity?

14          A    Again, I don't recall seeing any  
15 bank statements for that entity.

16          Q    Okay. Are you aware that pension  
17 plans that you analyzed submitted reclaim  
18 applications to jurisdictions other than  
19 Denmark?

20          A    I know there was another series of  
21 transactions that I wasn't involved with, if  
22 that's what you're talking about, the ED&F.

23          Q    No, not ED&F. Let's just say, if  
24 we refer to -- and I think you -- in  
25 Paragraph 243, you refer to the Lehman plans?

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1 A That's 243.

2 (Witness reviewing.)

3 I mean, I describe the Lehman  
4 plans, I think, earlier on in the --

5 Q I think --

6 A -- in the report. There's a whole  
7 discussion in the "Factual Background"  
8 section of the Lehman plans and who was  
9 involved.

10 Q Right, right.

11 So if we just talk about the Lehman  
12 plans?

13 A Okay.

14 Q Are you aware of whether those  
15 plans submitted reclaim applications to  
16 jurisdictions other than Denmark?

17 A I am not.

18 Q Did you review Mr. Lehman's  
19 deposition?

20 A I believe that was one of the  
21 depositions that I've read, yes. Let me just  
22 see if it's on the list.

23 (Witness reviewing.)

24 Yes, his August 2021 deposition.

25 Q And in -- at Paragraph 244 of your

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1 initial report, you say -- you note here,  
2 "Payments to Lehman were typically made to  
3 one of two entities owned and controlled by  
4 Lehman." And then you have "Volaris LLC or  
5 First Alton, Inc."

6 Do you see that?

7 A Yes.

8 Q And Volaris LLC, Mr. Lehman had a  
9 pension plan that went by the same name.

10 Is that correct?

11 A I'd have to go check, but it  
12 wouldn't surprise me.

13 Q Well, in -- are you aware that  
14 Roger Lehman testified that his Volaris  
15 pension plan transacted in Belgian securities  
16 in addition to Danish securities?

17 A I don't recall specifically.

18 Q Well, at page -- and I'm just going  
19 to refer to his deposition and I'll quote  
20 it -- it's at Page 256 to 257 of Mr. Lehman's  
21 deposition.

22 "Question: Did the Volaris Pension  
23 Plan transact in Belgian securities as well  
24 as Danish securities?

25 Answer: To the best of my

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1 knowledge, they did.

2 Question: Did the Volarius plan  
3 also submit refund applications to Belgium.

4 Answer: To the best of my  
5 knowledge they did, yes.

6 Question: Was the trading  
7 instruction the same as what we've gone  
8 through today, other than using Belgian  
9 securities?

10 Answer: I believe so for the most  
11 part. "

12 A Okay.

13 Q Do you recall reviewing documents  
14 that reflected potential reclaim applications  
15 to other jurisdictions?

16 A I do not.

17 Q So is it -- if there were -- if  
18 Mr. Lehman is correct and there were reclaim  
19 applications to jurisdictions other than  
20 Denmark, is it possible that this -- however,  
21 you referred -- the flow of payments could  
22 include tax receipts not just from Denmark  
23 but from other jurisdictions?

24 MR. WEINSTEIN: Objection to form.

25 A I don't recall seeing anything to

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1 indicate that. I recall seeing invoices for  
2 services related to -- I'd have to go back  
3 and look, but I thought they referenced  
4 specifically the Danish transactions.

5 But there were a lot of documents,  
6 so I'd have to go back and look.

7 Q If we look at the next -- so if you  
8 look at Paragraph 244 of your initial report?

9 A Yeah.

10 Q You state that -- let me make sure  
11 I'm on the same -- let me make sure I'm on  
12 the same -- the right paragraph here.

13 I know. It's 245, 245.

14 I'm sorry.

15 A Okay.

16 Q You say, "For plans in which Lehman  
17 himself was the participant, Solo's records  
18 suggest that Lehman was paid 15 percent of  
19 the refunds paid by SKAT."

20 Do you see that?

21 A Yes.

22 Q You see that there?

23 How did you -- how did you get to  
24 that number, 15 percent?

25 A If you look at the footnote, it's

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1       33 million divided by 220 million is  
2       15 percent.

3           Q     Okay. So -- right. I see that. I  
4       see the footnote.

5                   So to get to 15 percent, are you  
6       assuming that the 33 million paid to  
7       Mr. Lehman was all reclaims -- was all for  
8       reclaims paid by SKAT?

9           A     That's the assumption, yes, that  
10      would be.

11          Q     And so would it affect your opinion  
12      pertaining to this percentage that you came  
13      up with there if part of the 33 million that  
14      was paid to Mr. Lehman was for reclaims paid  
15      by other foreign entities?

16          A     Yes, to the extent -- yeah, it  
17      would -- it would affect the percentage. Let  
18      me just look at the lead-in to this whole  
19      section. Give me a second here.

20                   (Witness reviewing.)

21                  Yes, because I focused on the Solo  
22      trades from the Danish securities. So to the  
23      extent some of that money was from tax  
24      reclaims that weren't for the purported  
25      Danish securities, it would affect that

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1 percent, yes.

2 Q How would it affect that percent?

3 A It would go down. It could  
4 potentially go down.

5 MR. LOPICCOLO: I think that's all  
6 I have.

7 THE WITNESS: Okay.

8 MR. WEINSTEIN: Yeah, just want to  
9 check. Is that it on the defense side?

10 THE WITNESS: I will read and sign.

11 MR. WEINSTEIN: Seems that way.

12 Mike and Jose, can you take us off the  
13 record?

14 THE VIDEOGRAPHER: Sure thing.

15 Stand by. The time is 2:26 p.m. and  
16 we're going off the record.

17 THE COURT REPORTER: Recapping  
18 orders, Wilmer Hale, original, two  
19 realtime hookups, rough draft, two day  
20 final.

21 Hughes Hubbard, copy sale, six  
22 realtime hookups, rough draft, two day  
23 final.

24 Hanamirian, regular copy sale,  
25 realtime hookup.

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1 Kostelanetz, regular copy sale.  
2 K&L Gates, regular copy sale.  
3 Dewey Pegno, one realtime hookup,  
4 rough draft, regular copy sale.  
5 Moore Tax Law Group, regular copy  
6 sale.  
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1 C E R T I F I C A T E

2

3 I, MICHAEL FRIEDMAN, a Certified Court  
4 Reporter and Notary Public, qualified in and for  
5 the State of New Jersey do hereby certify that  
6 prior to the commencement of the examination BRUCE  
7 DUBINSKY was duly sworn by me to testify to the  
8 truth the whole truth and nothing but the truth.

9 I DO FURTHER CERTIFY that the foregoing  
10 is a true and accurate transcript of the testimony  
11 as taken stenographically by and before me at the  
12 time, place and on the date hereinbefore set forth.

13 I DO FURTHER certify that I am neither a  
14 relative of nor employee nor attorney nor counsel  
15 for any of the parties to this action, and that I  
16 am neither a relative nor employee of such attorney  
17 or counsel, and that I am not financially  
18 interested in the action.

19

20



21

22 MICHAEL FRIEDMAN, CCR of the  
23 State of New Jersey  
24 License No: 30X100228600  
25 Date: March 30, 2022

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1

LAWYER'S NOTES

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1 DEPOSITION ERRATA SHEET

2

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5

6 DECLARATION UNDER PENALTY OF PERJURY

7 I declare under penalty of perjury  
8 that I have read the entire transcript of  
9 my Deposition taken in the captioned matter  
10 or the same has been read to me, and  
11 the same is true and accurate, save and  
12 except for changes and/or corrections, if  
13 any, as indicated by me on the DEPOSITION  
14 ERRATA SHEET hereof, with the understanding  
15 that I offer these changes as if still under  
16 oath.

17

18

19

20

21 Signed on the \_\_\_\_\_ day of  
22 \_\_\_\_\_, 20\_\_\_\_

23

24

25

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1 DEPOSITION ERRATA SHEET

2 Page No. \_\_\_\_ Line No. \_\_\_\_ Change to: \_\_\_\_\_

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4 Reason for change: \_\_\_\_\_

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22 Reason for change: \_\_\_\_\_

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24 SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

25 BRUCE DUBINSKY

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1 DEPOSITION ERRATA SHEET

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24 SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

25 BRUCE DUBINSKY